

Kalawatibai vs Soiryabai And Others on 1 May, 1991

Equivalent citations: 1991 AIR 1581, 1991 SCR (2) 599, AIR 1991 SUPREME COURT 1581, 1991 (3) SCC 410, 1991 AIR SCW 1525, (1991) 2 SCR 599 (SC), (1991) 2 DMC 143, (1991) 2 LANDLR 488, (1991) 2 LJR 27, 1991 ALL CJ 2 866, 1992 CHANDLR(CIV&CRI) 80, (1991) 2 CIVLJ 646, (1992) 1 HINDULR 25, (1991) 2 RRR 121, 1991 UJ(SC) 2 230, (1991) 2 JT 385 (SC), (1991) 4 BOM CR 115

Author: R.M. Sahai

Bench: R.M. Sahai, T.K. Thommen

PETITIONER:

KALAWATIBAI

Vs.

RESPONDENT:

SOIRYABAI AND OTHERS

DATE OF JUDGMENT 01/05/1991

BENCH:

SAHAI, R.M. (J)

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SAHAI, R.M. (J)

THOMMEN, T.K. (J)

CITATION:

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| 1991 AIR 1581 | 1991 SCR (2) 599 |
| 1991 SCC (3) 410 | JT 1991 (2) 385 |
| 1991 SCALE (1)852 | |

ACT:

Hindu Succession Act, 1956 (No. 30 of 1956): ss. 2, 14-Hindu widow's estate-Alienation by gift to female reversioner prior to 1956-Whether alienee could become absolute owner-`Limited owner'-Meaning of: s. 4-Hindu Law-Applicability of.

Hindu Law: Gift of widow's estate without legal necessity-Reversioner can claim possession within 12 years of widow's death-Whether alienee could claim adverse possession against reversioners during life time of widow.

Transfer of property Act, 1898: S. 41-Estoppel-Whether applicable against reversioners in case of gift of widow's estate in favour of one of reversioners.

Statutory Interpretation: Section-Ascertainment of meaning-Should be read in its entirety-Marginal note should

not be resorted to when language is plain and simple.

HEADNOTE:

A Hindu widow executed a gift deed in 1954 of the entire estate inherited by her from her husband in favour of the appellant, one of her daughters. This led to the filing of two cross-suits-one by the appellant for permanent injunction basing her claim on the gift deed and the other by the respondent, another daughter of the widow's for declaration and partition assailing the validity of the gift deed and claiming reversioners' right after death of the mother in 1968. The trial court decreed appellant's suit on adverse possession and estoppel, but not on s. 14 of the Hindu Succession Act, 1956, as in its view the widow who executed the gift deed in 1954, was incompetent to alienate widow's estate by gift permanently.

The appellate court affirmed the finding of the trial court on s. 14 of the Act, but opined that the appellant could not acquire any right by 'estoppel under s. 41 of Transfer of Property Act, against the reversioners by reasons of the widow's conduct'. It allowed the appeal of the respondent and dismissed the suit of the appellant holding that adverse

600

possession against the widow was not adverse against reversioners, and the next reversioner was entitled to recover the possession of the property or his share in it within 12 years from the date of the death of the widow.

In second appeal the High Court, treating the finding of the trial court on adverse possession as a finding of fact, held that possession of the appellant must be deemed to be on behalf of the other co-sharers in the absence of any evidence before ouster of the other sister. Aggrieved, the appellant filed the appeals by special leave to this Court.

On the questions whether: (1) a Hindu widow could alienate by gift the entire estate inherited by her from her husband in favour of one of the female reversioners prior to enforcement of Act 30 of 1956, and if so, what was the nature of right that the donee got under law? and (2) the donee became an owner of the widow's estate, a limited owner, an owner with some right or title so as to acquire rights of absolute ownership under s. 14 of the Act or a trespasser and acquired rights for adverse possession by perfecting her rights against the donor only or it was essential to prescribe rights against reversioners as well?

Dismissing the appeals, this Court

HELD: 1.1 Prior to the coming into force of Act 30 of 1956 a Hindu widow succeeding or inheriting any property from her husband or as widow of predeceased son, held limited interest known as Hindu women's estate, under the

Hindu Women's Right to Property Act, 1937. However, she had the right to enjoy or even destroy or dispose of the property or alienate it but such destruction or alienation should have been impressed with legal necessity or for religious or charitable purposes or for spiritual welfare of the husband. Necessary consequences that flowed from an alienation for legal necessity was that the property vested in the transferee or alienee, and the reversioners were precluded from assailing its validity. Since such an estate could not be alienated under Hindu Law except in certain circumstances and for specific purpose, the holder or the estate was known as limited owner. {613C-D;614F-G}

1.2 The expression 'limited owner' could not be understood except as it was interpreted and understood in Hindu Law. The term commonly means, a person with restricted rights as opposed to full owner with absolute rights. In relation to property, absolute or complete or full ownership comprises various constituents such as the right to

601

possess, actual or constructive, power to enjoy, that is, to determine manner of use extending even to destroying, right to alienate, transfer or dispose of etc. Any restriction or limitation on exercise of these rights may result in limited or qualified ownership. For instance restriction on enjoyment of property or its alienation. Such restriction or limitation may arise by operation of law or by deed or instrument. The limited ownership of female Hindu in Hindu law arose as a matter of law. A Hindu widow, according to different schools, Benaras, Bengal or Mithila and even in Bombay inherited or succeeded to property whether of male or female as a limited owner and held a limited estate only. [613D; 614B-D]

Janaki Ammal v. Karayanaswami, [1916] p. 43 I.A. p. 207 and Jaisri v. Raj Diwan Dubey,, [1961] 2SCR 559, referred to.

1.3 Prior to 1956, any alienation made by a Hindu widow or widow's estate prohibited by law or being beyond permissible limits could utmost create in the alienee temporary and transitory ownership precarious in nature and vulnerable in character open to challenge if any attempt was made to cloud reversioners' interest. The alienee's possession may be good against the world and her right in property may not be impeachable by the widow, but her interest qua the reversioner was to continue in possession at the maximum till the lifetime of her donor or transferor. It was life interest, loosely, as the duration of interest created under invalid transfer came to an end not on death of donee or transferee but donor or transferor. Such transfer stripped the widow of her rights and she could not acquire any rights under s. 14, and being voidable, and not void, could be avoided by reversioners including government taking by escheat; but the widow was bounded by it. [615A,

E-F]

Kamala Devi v. Bachu Lal Gupta, [1957] SCR 453; Collector of Masuli Patam v. Cavoly Venoata, [1861] 8 M.I.A. 529; Natwalal Punjabhai & Anr. v. Dadubhai Manubhai & Ors., AIR 1954 SC 61 and Radhey Krishan Singh & Ors. v. Shiv Shankar Singh & Ors., [1973] 2 SCC 472, referred to.

2.1 An alienee from a Hindu widow prior to 1956 did not acquire limited estate or widow's estate, nor was she a limited owner who could get any benefit under s. 14 of the Act. It was not even a life estate except loosely, as the right to continue in possession was not related with her span of life but of the transferor that is the Hindu widow. [616G-H;617A]

Smt. Chinti v. Smt. Daultu, AIR 1968 Delhi 264, disapproved.

602

Sulochana Kuer, v. Doomati Kuer, AIR 1970 Patna 352; Anath Bandhu v. Chanchala Bala, AIR 1976 Calcutta 303; Parmeshwari v. Santokhi, AIR 1977 Punjab 141; Gaddam Vankayama v. Gaddam Veerayya, AIR 1957 AP 230 and Marudakkal v. Arumugha., AIR 1958 Madras, referred to.

Badri Pershad v. Smt. Kanso Devi, [1970] 2 SCR 95 held inapplicable.

2.2 In the instant case the alienation by gift of entire widow's estate being contrary to law did not bind the reversioner who could file a suit after the death of the widow. The appellant could not claim to have acquired title to the property under the gift deed. Nor had she become a limited owner under Hindu Law which could mature into full ownership when the Act came into force. In fact such possession was not backed by any title as against reversioner which could preclude her from bringing the suit for declaration. [616B]

3. As regards the adverse possession, the High Court was not justified in concluding that it was a question of fact. Possession under a gift deed which was found to be invalid as it was not permitted under Hindu Law was on general principle contrary to law and as such could be adverse. The appellant could not acquire any right by adverse possession against reversioner during life time of her mother. Her claim was rightly negatived by the first appellate court. Even assuming that the alienee had perfected adverse possession against the donor, it was not sufficient to clothe her with right or title in the property so as to deprive the reversioners of their right to claim the property after the death of the widow, inasmuch as in the case of an alienation by Hindu widow without legal necessity, the reversioners were not bound to institute a declaratory suit during the lifetime of the widow. They could wait till her death and then sue the alienee for possession of the alienated property treating the alienation as a nullity. [617F-H;618A-B]

Radha Rani v. Hanuman Prasad, AIR 1966 SC 216, relied

on.

4.1 Being retrospective in operation s. 14(1) deals with rights of female Hindus both before and after the Act came into force, and the meaning of female Hindu prior to 1956 has to be understood in the light of Hindu Law as it prevailed then. The section enlarged the estate of those female Hindus who would otherwise have limited owners. This result flows by reading the first part with the last which uses the expression 'held by her as full owner thereof and not as a limited

603

owner'. A limited owner became a full owner provided she was a female Hindu who was possessed of any property acquired before the commencement of the Act. Therefore, mere being female Hindus was not sufficient. She should have been of that class of female Hindus who could on existence of other circumstances were capable of becoming full owners. Female Hindu could become absolute owner of property possessed by her on the date the Act came into force only if she was a limited owner whereas she would become absolute owner 1956 of the property of which she would otherwise have been a limited owner. [609B-E;611F]

Bai Vijia v. Thakorbhai Chelabhai, [1979] 3 SCC 300, relied on.

4.2 On a reading of s. 14(1) the conclusion is irresistible that a limited owner became a full owner provided she was in possession of the property on the date of enactment of the Act. Effect of Explanation appended to the section was that a female Hindu became absolute owner not only in respect of inherited property but even of property received by way of gift or on partition or in lieu of maintenance etc. provided she was a limited owner. And not that it enlarged the estate of even those who were not limited owner. Any other construction would militate against the otherwise clear meaning of sub-section (1). [608G-H;609F-H]

5. Hindu Succession Act did not obliterate Hindu Law. What has ceased to be operative after coming into force of the Act under s. 4 is text or rule etc. for which provision is the Act. And under s. 4(2) any law in force immediately before the commencement of the Act ceased to have effect if it was inconsistent with any provision of the Act. Therefore, except to the extent provision has been made in s. 14, that is, enlargement of the estate of limited owner, the Hindu Law in other regards remains operative. There is no provision in the Act which deprives reversioners of their rights except to the extent mentioned in s. 14. [617C-D]

6. Marginal note is usually not resorted to for construing meaning of a section, particularly, when the language is plain and simple. A section has to be read in its entirety as one composite unit without bifurcating or ignoring any part of it. [608D-E]

V. Tulsamma v. Shesha Reddy, [1977] 3 SCC 99, referred to.

Eramma v. Verrupana, [1966] 2 SCR 626; Gummalapura Taggina

604

Matada Kotturuswami v. Setra Veeravva & Ors., [1959] Supp 1 SCR 968, AIR 1959 SC 577; Mangal Singh v. Smt. Rattno, AIR 1967 SC 1786 Munna Lal v. Raj Kumar., AIR 1962 SC 1495 Sukhram v. Gauri Shankar, [1968] 1 SCR 476; Kuldeep Singh v. Surain Singh, [1988] Andhra Law Times, Gulwant Kaur v. Mohinder Singh, [1987] 3 SCC 674; Maharaja Pillai Lakshmi Ammal v. Maharaja Pillai T. Pillai, [1988] 1 SCC 99 and Jagannathan Pillai v. Kunjithapadam Pillai., [1987] 2 SCC 572, referred to.

Mulla's Hindu Law, 16th Edn. para 174, and Mayne's Hindu Law, 12th Edn. para 671, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 2486-87 (N) of 1978.

From the Judgment and Order dated 17.3.1978 of the Bombay High Court in Second Appeal Nos. 293 and 361 of 1972.

P.H. Parekh for the Appellant.

S. Padumanabhan, Amicus Curiae, R.A. Perumal and G. Narasimhulu for the Respondents.

The Judgment of the Court was delivered by R.M. SAHAI, J. Litigation, between two sisters, by way of cross-suits, one, for permanent injunction by the appellant basing her claim on gift deed executed in 1954 by her mother, a Hindu widow, of the entire estate inherited by her from her husband, and another for declaration and partition by respondent assailing validity of the gift deed and claiming reversioner's right after death of the mother in 1968, has reached this Court by grant of special leave against judgment of the Bombay High Court in Second Appeal raising a legal issue of seminal importance as to nature of right and title of female donee of Hindu widow's estate after coming into force of Hindu Succession Act (hereinafter referred to as the Act).

Facts are simple. Stakes, also, are not substantial, but the issue is of far-reaching consequence. Could a Hindu widow alienate by gift the entire estate inherited from the husband, in favour of one of the female reversioners prior to enforcement of Act 20 of 1956. In case answer to issue is in the affirmative then what was the nature of right that the donee got under law? Did she become an owner of a widow's estate, a limited owner, an owner with some right or title, so as to acquire rights of absolute ownership under section 14 of Act or a trespasser and if trespasser then whether she acquired rights by adverse possession by perfecting her rights against the donor only or it was essential to prescribe rights against reversioners as well?

Shorn of details, and various issues raised in the suits, suffice it to mention that even though the trial court found the gift deed to have been duly attested and executed after obtaining permission from the appropriate authority the claim of appellant, for permanent injunction, was decreed not on Section 14 of the Act as the widow who had executed the gift deed in 1954 was, 'incompetent to alienate widow's estate by gift permanently' under Hindu Law but on adverse possession and estoppel. The appellate court while affirming the finding on section 14 of the Act allowed the appeal and dismissed the suit as 'adverse possession against the widow is not adverse against reversioners, and the next reversioner is entitled to recover the possession of the property or his share in it within 12 years from the date of the death of the widow'. It was further held that the appellant could not acquire, any right by, 'estoppel under section 41 of the Transfer of Property Act against the reversioners by reason of the widow's conduct'. In view of the concurrent findings of two courts below on section 14 of the Act the High Court appears to have been invited to adjudicate, only, on the question if the appellate court was justified in reversing the finding on adverse possession which it disposed of, treating it as finding of fact, and observing that possession of appellant, 'must be deemed to be on behalf of other co-sharers in the absence of any evidence before ouster of the other sisters'. Whether the High Court was justified in not examining the question of adverse possession is not necessary to be gone into as the appellant can succeed, only, if the finding recorded by the first appellate court that the appellant could not acquire any rights against reversioners during lifetime of the widow is found to be erroneous in law.

But before doing so the claim of the appellant that she became an absolute owner under section 14 of the Act, reiterated, once again, in this Court, may be examined as it is a question of law. A full bench of the Delhi High Court in *Smt. Chinti v. Smt. Daultu*, AIR 1968 Delhi 264 held that possession of a female donee in pursuance of gift deed executed by her mother could not be characterised as illegal or of trespasser, therefore, she being a female Hindu 'possessed' of the property on the date Hindu Succession Act came into force became an absolute owner under section 14 of the Act. When more or less similar matter came up before Patna High Court in *Sulochana Kuer v. Doomati Kuer*, AIR 1970 Patna 352 the court, held that, "a Hindu woman's estate as such is not capable of transfer either by sale or gift. The mere concept of such an estate is not transferred on the transfer of properties attaching to the estate". In *Anath Bandhu v. Chanchala Bala*, AIR 1976 Calcutta 303 the Calcutta High Court, specifically, dissented from the Delhi decision and held that, "Section 14 wanted to benefit those female Hindus who were limited owners in then existing Hindu Law before the commencement of the Act. In the present case the limited owner Motibala having transferred the limited interest to Chanchala before the passing of the Act, it cannot be said that Chanchala's limited interest, if any, ripened into absolute interest in terms of section 14 of the Act". A full bench of Punjab and Haryana High Court in *Parmeshwari v. Santokhi*, AIR 1977 Punjab 141 too, did not agree with Delhi High Court. It went into the background of legislation, the original form of the bill, ambit of the explanation, anomalies that would result if, even, female alienee was deemed to be a limited owner and held, "that section 14 of the Act was not intended to benefit the alienees of a limited Hindu owner". Similar view was taken by Andhra Pradesh and Madras, High Court in AIR 1957 AP 280 and AIR 1958 Madras, *Gaddam Venkayama v. Gaddam Veeryya*, and *Marudakkal v. Arumugha*. Thus according to Delhi Court a donee of even entire Hindu widow's estate became absolute owner under section 14 of the Act whereas according to Patna, Calcutta, Punjab, Madras and Andhra Pradesh High Courts, rights of a female donee under Hindu Law, prior to coming into

force of the Act did not get enlarged under section 14 of the Act and it did not preclude reversioners from assailing validity of the gift deed. To ascertain which view accords more to the objective sought to be achieved by the Act it appears necessary to extract section 14 which reads as under:

(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 what-

soever, 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.

Needless to emphasise that the section was a step forward towards social amelioration of women who had been subjected to gross dis-crimination in matter of inheritance. Even when the Hindu Women's Rights to Property Act XVIII of 1937 was enacted it succeeded partially only. While providing for inheritance and devolution to widow and even widow of predeceased son the Act could not go beyond creating limited interest or a Hindu woman's estate. Absolute ownerships or female heir by effacing inequality and putting male and female heirs at par in matter of inheritance was achieved by the Succession Act. A female Hindu inheriting property under the Act, also, became a stock of descent. In *Eramma v. Verrupana*, [1966] 2 SCR 626 AIR 1966 SC 1789, this Court observed, "The object of the section is to extinguish the estate called 'limited estate' or 'widow's estate' in Hindu Law and to make a Hindu woman, who under the old law would have been only a limited owner, a full owner of the property with all powers of disposition and to make the estate heritable by her own heirs and not revertible to the heirs of the last male holder".

But did the legislature intend to extend same benefit, namely, enlarge the estate, held, on the date the Act came into force by any or every female Hindu into full and absolute estate irrespective of whether she was a limited owner or not. According to learned counsel for appellant the answer should be given in affirmative. He urged that since the age long traditional limitation on inheritance and disposition by a female was removed and the section was widely worded by using broad and comprehensive expressions such as, 'and property', 'possessed', 'acquired before or after the commencement of the Act' and each of these expressions have received expansive of the Act' and each of these expressions have received expansive interpretations by the Court there was no reason not to give similar interpretation to the word female Hindu. The learned counsel submitted that

there was no warrant to confine scope of the section to limited owners. He argued that if the argument of the respondent was accepted it shall result in substitution of the word 'female Hindu' with 'limited owner' which would be contrary to legislative intention, the social philosophy on which the section was founded and the principle of interpretation. Relying on the explanation, to the section, it was urged that it not only explained meaning of the word 'property' but it left no room for doubt that a female Hindu possessed of any property, which satisfied the extended meaning on the date the Act came into force, became an absolute owner. It was further argued that the expression 'limited owner' has been used in the section not to whittle down the otherwise simple and plain meaning of the words 'female Hindu' by introducing narrow concept of widows' estate or limited owner but to put beyond doubt the nature and status of rights of females after the Act. Support was also drawn from the marginal note of the section and it was urged that the words, 'property of a female Hindu to be her absolute property', was yet another indication to interpret the word 'female Hindu' widely, so as to include in its ambit a donee from a limited owner.

That the section is not very happily worded, does not admit of any doubt. It was commented upon by this Court in *V. Tulsamma v. Shesha Reddy*, [1977] 3 SCC 99 and it was observed that the section was, "a classic instance of statutory provision which, by reason of its inapt draftsmanship has created endless confusion for litigants". May be so but the answer to the issue must emerge from the section, its background, purpose of its enactment and the reason for use of such wide expression. Nothing turns on the marginal note as it is usually not restored to for construing meaning of a section, particularly, when the language is plain and simple. It is well settled that a section has to be read in its entirety as one composite unit without bifurcating it or ignoring any part of it. Viewed from this perspective the section, undoubtedly, comprises of two parts, one descriptive, specifying the essential requirements for applicability of the section, other consequences arising out of it. One cannot operate without the other. Neither can be read in isolation. Both are integral parts of the section. Mere provision that any property possessed by a female Hindu on the date the Act came into force shall be held by her would have been incomplete and insufficient to achieve the objective of removing inequality amongst male and female Hindus unless it was provided that the otherwise limited estate of such a female would become enlarged into full or absolute estate. Any other construction would result in not only ignoring the expression, 'and not as a limited owner' which would be against principle of interpretation but also against the historical background of enactment of the section. Whereas if it is read in its entirety with one part throwing light on another then the conclusion is irresistible that a limited owner became a full owner provided she was in possession of the property on the date of enactment of the Act.

Property acquired by a female Hindu before the Act came into force comprised, broadly, of inherited property or stridhana property acquired by her from a male or female. Nature of her right in either class of property, unlike males, depended on the school by which she was governed as well as whether it came to her by devolution or transfer from a male or female. This invidious discrimination was done away with after coming into force of 1956 Act and the concept of Hindu widows' estate or limited estate or stridhana ceased to exist by operation of section 14 read with section 4 of the Act which has an overriding effect. A female Hindu who but for the Act would have been a limited owner become full owner. But the section being retrospective in operation the meaning of female Hindu prior to 1956 has to be understood in the light of Hindu Law as it

prevailed then. The section enlarged the estate of those female Hindu who otherwise would have been limited owners. This result follows by reading the first part with the last which uses the expression, 'held by her as full owner thereof and not as a limited owner'. To put it differently a limited owner become a full owner provided she was a female Hindu who was possessed of any property acquired before the commencement of the Act. Therefore, mere being female Hindu was not sufficient. She should have been of that class of female Hindus who could on existence of other circumstances were capable of becoming full owners. Further the Act being applicable by virtue of section 2 to not only Hindus by religion but also to Buddhists, Jains or Sikhs and to any person who was not a Muslim, Christian, Parsi or Jew it was but necessary to use an expression of such wide connotation as female Hindu because by virtue of sub-section (3) of the section the word 'Hindu' in any portion of the Act, which includes section 14, the word had to be understood as including not only a person who was Hindu by religion but even others. However, the objective being to remove disparity and injustice to which females were subjected under Hindu Law the section limits its operation to such female Hindus who were limited owners. Reference to the explanation by the learned counsel was also not very apposite. It was appended to widen the meaning of property by adding to it the inherited property, and the property which came to be possessed by a female Hindu in manner mentioned in it. Its effect was that a female Hindu became absolute owner not only in respect of inherited property but even of property received by way of gift or on partition or in lieu of maintenance etc. provided she was a limited owner. And not that it enlarged the estate of even those who were not limited owner. Any other construction would militate against the, otherwise, clear meaning of sub- section (1).

Although this section has come up for interpretation, by this Court, on various occasions in different context but in none of these cases the Court had occasion to examine the ambit of expression female Hindu and whether it extended to females other than limited owner. Since in every case whether it was decided for or against it was the widow who was alive on the date the Act came into force and she being a limited owner the decision turned on if she was 'possessed' of the property so as to become full owner. For instance in *Gummalapura Taggina Matada Kotturuswami v. Setra Veeravva & Ors.*, [1959] Supp. 1 SCR 968=AIR 1959 SC 577" the widow was held to have acquired rights as the adoption made by her having been found to be invalid she was deemed to be in constructive possession and thus 'possession' of the property on the date the Act came into force. *Mangal Singh v. Smt. Rattno*, AIR 1967 SC 1786 was another case where widow's constructive possession enured to her benefit as she having been dispossession by her collaterals in 1954 and filed a suit for recovery of possession before the Act came into force was held to be 'possession' of the property so as to entitle her to become full owner. *Munna Lal v. Raj Kumar*, AIR 1962 SC 1495 was a case where the share of the widow was declared in preliminary decree. No actual division of share had taken place, yet the court held that it was property 'possessed' by her on the date the Act came into force. In *Sukhrām v. Gauri Shankar*, [1968] 1 SCR 476 it was held that a widow was full owner in joint Hindu family property as she became entitled to the interest which her husband had by virtue of Hindu Women Right to Property Act. The Court ruled that even though a male was subject to restrictions qualification on his interest in joint Hindu family property, but a widow acquiring an interest by virtue of the Act did not suffer such restriction. *V. Tulsamma v. Shesha Reddy*, [1977] 3 SCC 99 and *Bai Vija v. Thakorabhai Chelabhai*, [1979] 3 SCC 311 were cases where the widow was 'possessed' of the property in lieu of maintenance, and therefore, she was held to be full owner. In all these cases

since the widow was in possession, actual or constructive, on the date the Act came into force she was held to be a female Hindu 'possessed' of the property, and consequently, her limited ownership stood converted into full ownership by operation of law. Even in *Eramma v. Verupana* (supra) and *Kuldeep Singh v. Surain Singh*, [1988] Andhra law Times, where the benefit was denied under section 14 the female Hindu were widows but they were not held to be 'possessed' of the property because their possession was not backed by even the remotest vestige of title. in *Eramma's* case (supra) the benefit was denied as Hindu Women's Right to Property Act being not applicable on the date the succession opened she could not be held to be possessed of the property. And in *Kuldeep Singh's* case (supra) she had been divested of her interest as a result of transfer made by her. Contest in all these cases was between reversioner and the widow herself or the person claiming through her. Review of these decisions indicates that this Court has consistently taken the view as stated in *Bai Vija v. Thakorbbhai Chelabhai*:

"For the applicability of sub-section, two conditions must co-exist, namely,

(i) The concerned female Hindu must be possessed of property; and

(ii) Such property must be possessed by her as a limited owner."

mention is necessary to be made in this connection about observation in *Gulwant Kaur v. Mohinder Singh*, [1987] 3 SCC 674 that the Court in *Bai Vija's* case did not support, to lay 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 word, 'limited estate', the words are used to connote a right in the property to which possession of the female Hindu may be traced, but which is not a full right of ownership". *Gulwant Kaur's* case was concerned with acquisition of right by wife, on entrustment of property in lieu of maintenance, after 1956, when the concept of widows' estate or limited estate or even stridhana had ceased to exist. Therefore, what was necessary was being possessed of property, actual or constructive, by female Hindu under some right or title. Whereas *Bai Vija's* case was concerned with acquisition of right in property held in lieu of maintenance before 1956. Therefore a female Hindu could become absolute owner only if she was limited owner. Sub-section of section 14 deals with right of female Hindu both before and after the Act came into force. Female Hindu could become absolute owner of property possessed by her on the date the Act came into force only if she was a limited owner whereas she would become absolute owner after 1956 of the property of which she would otherwise have been a limited owner.

Reference may be made to *Maharaja Pallai Lakshmi Ammal v. Maharaja Pillai T. Pillai*, [1988] 1 SCC 99 where this Court while examining right of wife put in exclusive possession of the property with the right to take the income for her maintenance was held to have become full owner under section 14(1) as she entered into possession after the death of her husband in 1955 and was in possession in 1956.

The Court held that the right to utilise income for her maintenance must be "presumed to have resulted in property being given to her in lieu of maintenance". On this finding the property being possessed on the date the Act came into force as contemplated in the explanation, the widow being a

limited owner became a full owner and the gift executed by her in favour of her daughter after 1956 was unexceptionable. The Court, however, while repelling the submission advanced on superficial conflict in Gulwant Kaur and Bai Vija reiterated what was observed in Gulwant Kaur's case. As already discussed Gulwant Kaur's case related to acquisition of property after 1956 whereas in Bai Vija it was acquired before 1956. The observations made in the two decisions must be understood in that context. Moreover in Gulwant Kaur's case the ratio was founded on Jagannathan Pillai v. Kunjithapadam Pillai, [1987] 2 SCC 572 a decision which shall be adverted to later. But it too was concerned with acquisition after 1956. And the bench while discussing scope of section 14(1) observed.

"that the limited estate or limited ownership of a Hindu female would enlarge into an absolute estate or full ownership of the property in question in the following fact situation:

`Where she acquired the limited estate in the property before or after the commencement of the Act provided she was in possession of the property at the time of the coming into force of the Act on June 17, 1956'."

None of these decisions, namely, Gulwant Kaur (supra) or Maharaja Pillai (supra) or Jagannathan Pillai purported to lay down that the Section 14(1) contemplated enlargement of estate prior to 1956 of even those females who were not limited owners. According to Mulla's Hindu Law (sixteenth edition, paragraph 174) every female who took a limited or restricted estate was known as limited heir. And according to every school except Bombay every female who succeeded as an heir whether to a male or female took a limited estate in the property. Even in Bombay a female who by marriage entered into Gotra (family) of the deceased male inherited a limited estate only. And in paragraph 176 it is stated that incident of estate taken by every limited owner was similar to incident of widow's estate. Mayne's Hindu Law, (12th edition, paragraph 671) too brings out the same by stating that the typical form of estate inherited by a woman from a male was compendiously known as the widow's estate. And the limitation which applied to such estate applied to all estate derived by a female by descent from a male or female whether she inherited as daughter, mother, grandmother, sister or as any other relation. Even stridhana property according to Mulla created limited interest in its successors, except in Bombay in certain circumstances and a female inheriting stridhana took a limited interest in it and on her death it passed not to her heirs but to the next stridhan heirs of the female from she inherited.

Thus on plain reading of the Section, and its interpretation by this Court in various decisions a female possessed of the property on the date the Act came into force could become absolute owner only if she was a limited owner. This being the legal position it may now be seen if a Hindu widow could transfer or alienate widow's estate by way of gift prior to 1956 and if so to what extent. And in such alienation what right or interest was created in the alienee. Did she become a limited owner so as to become a full owner under Section 14 of the Act? A Hindu widow succeeding or inheriting any property from her husband or as widow of predeceased son, held limited interest known as Hindu women's estate, prior to coming into force of 1956 Act, under the Hindu Women's Right to Property Act, 1937. Since such an estate could not be alienated under Hindu Law except in certain

circumstances and for specific purpose the holder of the estate was known as limited owner. The expression 'limited owner' thus could not be understood, except as it was interpreted and understood in Hindu Law. Could the same be said of a female donee or alienee? The Delhi High Court assumed that a female donee was a limited owner, consequently, if she was possessed of the property on the date the Act came into force and her possession was not 'without title', she became an absolute owner. Basis for the decision was construction of the word 'possessed' by this Court in Gummalapura Taggina's case (supra) wherein it was held that the word was used in widest connotation so that a widow, even if in constructive possession, was entitled to absolute ownership under Section 14 of the Act. Support was also drawn from converse case of Eramma (supra) this Court negated the claim of widow under Section 14 as her possession on the date the Act came into force was not legal but that of a trespasser. What the High Court lost sight of was that the claim of widow in Gummalapura's case (supra) was upheld because the adoption made by her having been found to be invalid she was deemed to be in constructive possession on the date the Act came into force. And Eramma's case (supra) was concerned with a widow, who claimed to have inherited through son in State of Hyderabad where Hindu Women's Rights to Property Act did not apply on the date the son died. Consequently, it was held that "the provisions of Section 14 of the Act cannot be attracted in the case of a Hindu female who is in possession of the property of the last male holder on the date of the commencement of the Act when she is only a trespasser without any right to property". The High Court overlooked the vital observation made in earlier part of the judgment to the effect. "In other words, Section 14(1) of the Act contemplates that a Hindu female who in 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." Limited owner commonly means a person with restricted rights as opposed to full owner with absolute rights. In relation to property absolute, complete or full ownership comprises various constituents such as the right to possess, actual or constructive, power to enjoy, that is to determine manner of use extending even to destroying, right to alienate, transfer or dispose of etc. Any restriction or limitation on exercise of these rights may result in limited or qualified ownership. For instance restriction on enjoyment of property or its alienation. Such restriction or limitation may arise by operation of law or by deed or instrument. The limited ownership of female Hindu in Hindu Law arose as a matter of law. A Hindu widow, according to different schools, Banaras, Bengal or Mithila and even in Bombay inherited or succeeded to property whether of male or female as a limited owner and held a limited estate only. Nature of such estate was explained by the Privy Council in *Janki Ammal v. Narayanaswami*, [1916] p. 43 I. A. p. 207 to be, "her right is of the nature of a right to property, her powers in that character are limited". In *Jaisri v. Raj Diwan Dubey*, [1961] 2 SCR 559 it was observed by this Court that "when a widow succeeds as heir to her husband the ownership in the property both legal and beneficial vests in her". And the restriction on her power to alienate except for legal necessity is imposed, "not for the benefit of reversioners but is an incident of estate". Thus a Hindu widow prior to 1956 held the property fully with right to enjoy or even destroy or dispose it of or alienate it but such destruction or alienation should have been impressed with legal or for religious or charitable purposes or for spiritual welfare of the husband. Necessary consequences that flowed from an alienation for legal necessity was that the property vested in the transferee or alienee, and the reversioners were precluded from assailing its validity. In *Kamala Devi v. Bachu Lal Gupta*, [1957] SCR 453 this Court after reviewing various authorities extended this principle to female donee. A gift made within reasonable limits, in favour of daughter even two years after the marriage

but in pursuance of promise made at time of the marriage was upheld and the reversioners claim was repelled on permissible alienation under Hindu Law. But what right or title is acquired by the alienee if transfer is against legal necessity or contrary to law? The authorities appear to be at one that such transfer being not void but voidable could be avoided by reversioners including Govt. taking by escheat Collector of Masulipatam v. Cavalry Vencata, [1861] 8 M.I.A.

529. But the widow was held bound by the transfer. In *Natwalal Punjabhai & Anr. v. Dadubhai Manubhai & Ors.*, AIR 1954 SC 61, the Court held as under:

"The Hindu Law certainly does not countenance the idea of a widow alienating her property without any necessity merely as a mode of enjoyment as was suggested before us by Mr. Ayyangar. If such a transfer is made by a Hindu widow it is not correct to say that the transferee acquires necessarily and in law an interest commensurate with the period of the natural life of the widow or at any rate with the period of her widowhood. Such transfer is invalid in Hindu Law, but the widow being the grantor herself, cannot derogate from the grant and the transfer cannot also be impeached so long as a person does not come into existence who can claim a present right to possession of the property."

Thus if prior to 1956 any alienation was made by a Hindu widow of widow's estate prohibited by law or being beyond permissible limits, it stripped the widow of her rights and she could not acquire any rights under section 14. And so far as alienees were concerned it could utmost create temporary and transitory ownership precarious in nature and vulnerable in character open to challenge if any attempt was made to cloud reversioner's interest. Her possession may be good against the world, her right in property may not be impeachable by the widow but her interest qua the reversioner was to continue in possession at the maximum till the lifetime of her donor or transferor. It was life interest, loosely, as the duration of interest created under invalid transfer came to an end not on death of donee or transferee but donor or transferor. So far as the male alienees from limited owners, that is female Hindu prior to 1956, are concerned, it was held by this Court in *Radhey Krishan Singh & Ors. v. Shiv Shankar Singh & Ors.*, [1973] 2 SCC 472 that, the alienation could be challenged by the reversioner as there was nothing in the Hindu Succession Act which has taken away such a right. A female alienee did not enjoy better or different status as the Hindu Law applied universally and uniformly both to male and female alienees. She did not become limited owner or holder of a limited estate as understood in Hindu Law. And the alienation without legal necessity could be assailed by the reversioner. No change was brought about in this regard by the Act. If the alienation was valid i.e., it was for legal necessity or permitted by law then the donee became an owner of it and the right and title in the property vested in her. But if it was contrary to law, as in this case the gift being of entire widow's estate, then it did not bind the reversioner who could file a suit after the death of the widow. And the appellant cannot claim to have acquired title to the property under the gift deed. Nor had she become a limited owner under Hindu Law which could mature into full ownership when the Act came into force. In fact such possession was not backed any title as against reversioner which could preclude her from bringing the suit for declaration.

Reliance was placed on observations in *Jagannathan Pillai v. Kunjithapadam Pillai & Ors.*, [1987] 2 SCR 1070 that, ``To obviate hair splitting, the legislature has made it abundantly clear that whatever be the property possessed by a Hindu female, it will be of absolute ownership and not of limited ownership notwithstanding the position under the traditional Hindu Law'', and it was submitted that the appellant satisfied the criteria to entitle her to claim that her estate irrespective of its nature Hindu Law got enlarged under section 14 of the Act. An observation without reference to facts discloses neither the law nor the ratio- de-cedendi which could be taken assistance of. Factually, the issue was the effect of re-transfer by the alienee in favour of the widow after 1956. And the answer was that, ``When the transaction was reversed and what belonged to her was retransmitted to her, what the concerned Hindu female acquired was a right which she herself once possessed namely, a limited ownership (as it was known prior to the coming into force of the Act) which immediately matures into or enlarges into a full ownership in view of Section 14(1) of the Act on the enforcement of the Act. The resultant position on the reversal of the transaction would be that the right, title and interest that the alienee had in the property which was under `eclipse' during the subsistence of the transaction had re-emerged on the disappearance of the eclipse''. Truly speaking, the interpretation of sub-section (1) of section 14 was no different from the other decisions as is clear from the extracts quoted earlier. It is thus clear that an alienee from a Hindu widow prior to 1956 did not acquire limited estate or widow's estate nor she was a limited owner who could get any benefit under section 14 of the Act. It was not even a life estate except loosely, as the right to continue in possession was not related with her span of life but of the transferor that is the Hindu widow. The decision of Delhi High Court, therefore, does not lay down the law correctly. The other view taken by Patna, Calcutta and Punjab and Haryana Courts that sub-section (1) of section 14 did not extend the benefit of full ownership to female alienees brings out the objective of the section appropriately and correctly.

Nor is the decision in *Badri Pershad v. Smt. Kanso Devi*, [1970] 2 SCR 95 of any assistance. It was a case where the widow entitled to the interest of her husband got certain property prior to 1956 as a result of arbitration with specific stipulation and she shall have only life interest. This was ignored and she was held, rightly, to be the absolute owner whose rights were governed by section 14(1) and not 14(2).

Further Hindu Succession Act did not obliterate Hindu Law. What has ceased to be operative after coming into force of the Act under section 4 is text or rule etc. for which provision is made in the Act. And under section 4(2) any law in force immediately before the commencement of the Act ceased to have effect if it was inconsistent with any provision of the Act. Therefore except to the extent provision has been made in section 14, that is, enlargement of the estate of limited owner, the Hindu Law in other regards remained operative. There is no provision in the Act which deprives reversioners of their rights except to the extent mentioned in section 14. In *Radha Rani v. Hanuman Prasad*, AIR 1966 SC 216 this Court overruled the decisions of the Allahabad and Patna High Courts that there were no reversioners or reversionary rights after 1956 and held, ``it is open to reversioner to maintain a suit for declaration that an alienation made by a Hindu female limited owner before the coming into force of Hindu Succession Act 1956 was without legal necessity and was not binding upon reversioners''.

Coming now to the issue of adverse possession the High Court was not justified in concluding that it was a question of fact. Possession under a gift deed which was found to be invalid, as it was not permitted under Hindu Law was on general principle contrary to law, and as such could be adverse. When did it become adverse to the donor and what circumstances constitute adverse possession against the donor is an aspect which does not arise for consideration as, even assuming in favour of the appellant, the question is, if adverse possession against donor was sufficient to clothe her with right or title in the property so as to deprive the reversioners of their right to claim the property after the death of the widow? In Radha Rani's case (supra) this Court held.

``In the case of an alienation by Hindu widow without legal necessity, the reversioners were not bound to institute a declaratory suit during the lifetime of the widow. They could wait till her death and then sue the alienee for possession of the alienated property treating the alienation as a nullity." Therefore, it is obvious that the appellant could not acquire any right by adverse possession against reversioner during lifetime of her mother. Her claim was rightly negated.

Before parting with this case, we express our thanks to Sri Padmanabhan, Senior Advocate who, on our request rendered valuable assistance. We are thankful to Sri Parekh and Sri Narasimhulu also for their assistance. The result is that this appeal fails and is dismissed. But there shall be no order as to costs.

R.P.

Appeal dismissed.