

Badri Pershad vs Smt. Kanso Devi on 26 August, 1969

Equivalent citations: 1970 AIR 1963, 1970 SCR (2) 95, AIR 1970 SUPREME COURT 1963

Author: A.N. Grover

Bench: A.N. Grover, J.C. Shah, V. Ramaswami

PETITIONER:

BADRI PERSHAD

Vs.

RESPONDENT:

SMT. KANSO DEVI

DATE OF JUDGMENT:

26/08/1969

BENCH:

GROVER, A.N.

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GROVER, A.N.

SHAH, J.C.

RAMASWAMI, V.

CITATION:

1970 AIR 1963 1970 SCR (2) 95

1970 SCC (1) 8

CITATOR INFO :

D 1976 SC2198 (6)

RF 1977 SC1944 (68)

RF 1979 SC 993 (3)

RF 1987 SC2251 (5,6,7)

D 1991 SC1581 (15)

ACT:

Hindu Succession Act (30 of 1956), s. 14(1) and (2)-Widow inheriting property under s. 3(1), Hindu Women's Rights to Property Act (18 of 1937)-Award allotting her share before the coming into force of the 1956-Act-Award describing her right as widow's estate-Whether widow's rights governed by s. 14(1) or s. 14(2).

HEADNOTE:

A Hindu, owning his self-acquired properties, died in 1947

leaving five sons and a widow. In 1950, an arbitrator was appointed for dividing the assets and liabilities among the heirs. The arbitrator gave his award and a decree was passed in terms of the award. Under the award, the widow was allotted her share of the properties and it was stated that she was to have a widow's estate in those properties.

On the question whether, on the coming into force of the Hindu Succession Act, 1956, she became a full owner of the properties under s. 14(1) or only had a restricted estate in such properties under s. 14(2).

HELD: The words 'possessed' and 'acquired' in s. 14(1) are used with the widest possible meaning, so that, the 'possession' may be either actual or constructive and the 'acquisition' can be in any manner whatsoever. Hence, where a female Hindu has a share in joint properties which are later on partitioned by metes and bounds and she gets possession of the properties allotted to her, before the coming into force of the Hindu Succession Act, she was not only 'possessed' of that property at the time of the coming into force of the Act but had also 'acquired' it before its commencement. The mere fact that the partition was by means of an arbitration award would not bring the matter within s. 14(2) as s. 14(1) had already become fully applicable. Section 14(2) is in the nature of a proviso or an exception to s. 14(1) and comes into operation only if acquisition in any of the methods indicated therein is made for the first time without there being any preexisting right in the female Hindu to the property. [98 F--H; 99 A-C, F]

In the present case, the widow inherited the property under s. 3(1) of the Hindu Women's Rights to Property Act, 1937, and was therefore in 'possession' of it within the meaning of that word in s. 14(1), and, when the award separated her share by metes and bounds, she 'acquired' the property within the meaning of that section. Therefore, she had become full owner of the property in her possession under s. 14(1) on the coming into force of the Hindu Succession Act, even though previously she was a limited owner. [97 G--H; 98 D--E; 99 E--F]

Gummalapura Taggina Matada Kotturuswami v. Setra Veerayya, [1959] Supp. 1 S.C.R. 968, Munnalal v. Rai Kumar [1962] Supp. 3 S.C.R. 418 and Sukhram v. Gauri Shankar, [1968] 1 S.C.R. 476., followed.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1937 of 1966.

Appeal from the judgment and order dated July 19, 1965 of the Punjab High Court, Circuit Bench at Delhi in Regular Second Appeal No. 251-D of 1964.

S.T. Desai and I. N. Shroff, for the appellant.

S.V. Gupte, K.L. Mehta, Yogeshwar Dayal, M.M. Kshatriya and G.S. Chatterjee, for the respondent. The Judgment of the Court was delivered by Grover, J. This is an appeal by special leave from a judgment of the Punjab High Court (Circuit Bench, Delhi). The facts may be briefly stated: One Gajju Mal had five sons, Badri Pershad, Ganesh Dass, Devi Chand, Narain Das and Ishar Das. The first four were by his first wife, whereas the 5th son Ishar Das was by his second wife Smt. Kanso Devi. Gajju Mal died in 1947 leaving him surviving the said five sons and Smt. Kanso Devi. On August 5, 1950 Tulsi Ram Seth was appointed by the parties as an arbitrator for resolving certain differences which had arisen relating to partition of the urban immovable properties and other assets and liabilities left by Gajju Mal. On October 31, 1950 the arbitrator gave his award. Under clause 6 of this award Smt. Kanso Devi was awarded three sets of property including bungalow No. 20, Alipore Road, Delhi. The award was made the rule of the court. It was stated in the award that Smt. Kanso Devi would have a widow's estate in the properties awarded to her. It was also provided that the immovable properties allotted and awarded to the various parties would be individually and exclusively owned by them and each party would be entitled to take physical or constructive possession of the properties allotted and awarded to his or her share.

Badri Pershad, the appellant before us, filed a suit in August 1961 against the respondent Smt. Kanso Devi pleading inter alia that she was a limited owner of the property which had been given to her by the award and that she was trying to alienate the same and commit acts of waste to the prejudice of the reversioners. He asked for a perpetual injunction restraining her from committing acts of waste and from alienating the suit properties. The respondent contested the suit. On the pleas of the parties the trial court framed seven issues out of which the material one was No. 4 which was in these terms: , "Whether the defendant was 'awarded life estate only in the property in suit .9,, On April 17, 1963 the trial court dismissed the suit holding that no act of waste on the part of the respondent had been proved and that she had inherited the property under the Hindu Women's Right to Property Act, 1937 and that the award had simply sepa-

rated her share by metes and bounds, and under s. 14(1) of the Hindu Succession Act she had become full owner thereof. The first appellate court and the High Court affirmed the decree of the trial court.

The sole question for determination is whether the case of the respondent was governed by sub-s. (1) or sub-s. (2) of s. 14 of the Hindu Succession Act, hereinafter called the Act. This section reads:

14(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 of 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 restricted estate in such property."

According to the appellant the suit property was 'acquired by the respondent under the award given by Tulsi Ram Seth or' alternatively under the decree based on the award, the estate being restricted by both the award and the decree. The provision in the award that the respondent was to have a widow's estate under Hindu Law, it is said, conferred on her only a limited estate and sub-s. (1) would be inapplicable. The position of the respondent throughout has been that she had interest in all the joint properties together with the right to partition under the provisions of Hindu Women's Right to Property Act, 1937 (Act XVIII of 1937). Thus the property was acquired by the respondent at a partition within the terms of the Explanation to sub-s. (1) of s. 14. As she was possessed of that property at the time the Act came into force she became full owner thereof by virtue of s. 14(1) of the Act even though previously she was a limited owner.

Under s. 3(1) of Act XVIII of 1937 as amended by Act XI 1938 when a Hindu governed by any School of Hindu law other than the Dayabhaga School died intestate leaving separate property his widow was entitled to the same share as a son in respect of the property left by her husband. Under s. 3(2) when any such Hindu died having at the time of his death an interest in a -Hindu Joint Family property his widow was to have the same interest in the property as he himself had. Sub-s. (3) provided that any interest devolving on a Hindu widow under the aforesaid provision was to be a limited interest known as Hindu women's estate but that the widow was to have the same right of claiming partition as a male owner.

The case in the courts below proceeded on the footing that all the properties left by Gajju Mal were his separate acquisitions. It was apparently for that reason that the High Court gave a finding that before the partition effected by the arbitrator by means of the award, the five sons and the widow (respondent) of Gajju Mal enjoyed equal shares in the properties left by him.

The point for our consideration is narrowed down to this. When a female acquires an interest under the provisions of Act XVIII of 1937 in the properties of her husband which are subsequently separated by means of a partition does she become an absolute owner under sub-s. (1) of s. 14 of the Act or does she get only a restricted estate under sub-s. (2) of that section? The contention of the learned counsel for the appellant is that the court should first look at sub-s. (2) and if the case does not fall within its ambit and, scope then alone sub-s. (1) will become applicable. This manner of reading of the section is not warranted either on principle or authority. The section has to be read as a whole 'and it would depend on the facts of each case whether the same is covered by the first

Sub-section or sub-s. (2). The -critical words in sub-s. (1) are "possessed" and "acquired". The word "possessed" has been used in its widest connotation and it may either be actual or constructive or in any form recognised by law. In the context in which it has been used in s. 14 it means the state of owning or having in one's hand or power (see *Gumrnalapura Taggina Matada Kotturuswami v. Setra Veerayya & Ors.*)(1). In *S.S. Munna Lal v.S.S. Rajkumar & Ors.*(2) it was held that 1/4th share of a female which had been declared by the preliminary decree passed before the enactment of the Act was possessed by her within the meaning of s. 14 and she became the full owner so that on her death the said property descended to her grandsons in accordance with the provisions of ss. 15 and 16 of the Act. The word "acquired" in sub-s. (1) has also to be given the widest possible meaning. This would be so because of the language of the Explanation which makes sub-s. (1) applicable to acquisition of property by inheritance or devise or at a partition or in lieu of maintenance or arrears of maintenance or by gift or by a female's own skill or exertion or by purchase or prescription or in any manner whatsoever. Where at the commencement of the Act a female Hindu has a share in joint properties which are later on partitioned by metes and bounds and she gets possession of the properties allotted to her there can be no manner of doubt that she is not only possessed of that property at the time of the coming into force of the Act but has also acquired the same before its commencement.

Sub-section (2) of s. 14 is more in the nature of a proviso or an exception to sub-s. (1). It can come into operation only if acquisition in any of the methods indicated therein is made for the first time without there being any preexisting right in the female Hindu who is in possession of the property. The Madras High Court was right in the observations made in *Rangaswami Naicker v. Chinnammal & Another*(1) that sub-s. (2) made it clear that the object of s. 14 was only to remove the disability on women imposed by law and not to interfere with contracts, grams or decrees etc. by virtue of which a women's right was restricted. In *Sukhram & Another v. Gauri Shankar & Another*(2), one Kishan Devi had acquired in 1952 the same interest in the property of the joint family which her husband Hukan Singh had under the provisions of Act XVIII of 1937. The question arose, whether after the coming into force of the Act she got rights of full ownership and could alienate the properties in which she had acquired a limited interest without the consent of the male members of the family. This Court decided that she had become full owner by virtue of the provisions of s. 14(1) of the Act. This case is quite apposite for our purpose and we must hold that the respondent became a full owner of the suit properties when the Act came into force. The mere fact that there was a partition by means of arbitration which resulted in an award and a decree based on it would not bring the matter within sub-s. (2) as the provisions of sub-s. (1) became fully applicable particularly in view of the express terms of the Explanation.

This appeal fails and it is dismissed with costs.

V.P.S. Appeal dismissed.

(1) A.I.R. 1964 Mad. 387. (2) [1968] 1 S.C.R. 476.