

Jaswant Kaur vs Major Harpal Singh on 11 April, 1989

Equivalent citations: JT1990(1)SC252, (1991)100PLR241, (1989)3SCC572, AIRONLINE 1989 SC 19, 1989 (3) SCC 572, (1991) 2 PUN LR 241, (1990) 1 MAD LJ 1, (1990) 1 JT 252, (1990) 1 LJR 774, (1990) 1 MAD LW 197, (1990) 6 SERVLR 635, (1990) 1 JT 252 (SC)

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Bench: G.L. Oza, K. Jagannatha Shetty Shetty, S. Natarajan

ORDER

G.L. Oza, J.

1. The only question which arises in the case relates to applicability of Section 14(1) or 14(2) of the Hindu Succession Act. Long before the Hindu Succession Act came into force, the husband of the appellant gave to her one half of his property under a will, but the will imposed certain restrictions on the right of alienation. The appellant continued to be in possession of the property till the Hindu Succession Act came into force. It is said that thereafter she disposed of a part of the property which is the subject matter of challenge by the respondent by way of suit.

2. The question raised in this appeal has been considered in detail and is concluded by the judgment of this Court in Gulwant Kaur and Anr. v. Mohinder Singh and Ors. wherein it is observed:

It is obvious that Section 14 is aimed at removing restrictions 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 a 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 we do not see what further title the widow is required to establish 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.

3. After this decision there are number of other decisions taking the same view and 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-clause (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 Sub-clause (1). We, therefore, find no justification in maintaining the judgment passed by the High Court. The appeal is therefore allowed. The judgment passed by the High Court is set aside and the suit filed by the respondent is dismissed. The appellant shall be entitled to costs of this appeal. Costs quantified at Rs. 5,000/-