

Nazar Singh And Ors vs Jagjit Kaur And Ors on 13 November, 1995

Equivalent citations: 1996 AIR 855, 1996 SCC (1) 35, AIR 1996 SUPREME COURT 855, 1996 (1) SCC 35, 1996 AIR SCW 229, 1996 () ALL CJ 600, (1995) 20 MARRILJ 59, (1995) 8 JT 161 (SC), 1996 (2) APLJ 1, 1996 WLC(RAJ)(UC) 27, 1995 (20) MARR LJ 59, (1995) 4 SCJ 659, (1995) 4 CURCC 282, (1996) 1 RRR 379, (1996) 27 ALL LR 106, (1996) 1 ICC 442, (1996) 2 LANDLR 13, (1996) 1 LS 1, (1996) 1 ANDH LT 14, (1996) 1 CIVLJ 861, (1996) 1 HINDULR 82, (1996) 1 LJR 141, (1996) 1 ORISSA LR 175

Author: B.P. Jeevan Reddy

Bench: B.P. Jeevan Reddy, S.B Majmudar

PETITIONER:

NAZAR SINGH AND ORS.

Vs.

RESPONDENT:

JAGJIT KAUR AND ORS.

DATE OF JUDGMENT 13/11/1995

BENCH:

JEEVAN REDDY, B.P. (J)

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MAJMUDAR S.B. (J)

CITATION:

1996 AIR 855

1996 SCC (1) 35

JT 1995 (8) 161

1995 SCALE (6) 476

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T B.P.JEEVAN REDDY,J.

Leave granted. Heard counsel for the parties. This appeal is preferred against the judgment and decree of the Punjab and Haryana High Court dismissing the second appeal filed by the defendants-appellants. The suit for "possession of the land (suit lands) to the extent of 7/8th share" has been decreed by the trial court and affirmed in appeal and second appeal.

Gurdial Singh was a resident of a village in Bhatinda district in Punjab. He owned 94 kanals and 19 marlas of land in the village. He was working as an employment officer in Madhya Pradesh. The relations between him and his wife, Smt.Harmel Kaur, were strained. They were living apart. Harmel Kaur filed a petition under Section 488 of the Criminal Procedure Code (old code) for grant of maintenance. In those proceedings, a compromise was arrived at between Gurdial Singh and Harmel Kaur whereunder the suit lands (94 kanals and 19 marlas in extent) were given to Harmel Kaur in lieu of her maintenance. The compromise entered into between them is evidenced by Exh. P-3. The lands were given to Harmel Kaur subject to the following conditions:

- "1. That the possession of the land in dispute was given to Harmel Kaur defendant No.4.
2. That Harmel Kaur would be entitled to get the land cultivated or to lease it out and to utilize its income for herself, wherever she likes.
3. That she would not sell or mortgage this land. She would however be responsible for the payment of land revenue or any other Govt. Tax from time to time.
4. If during the life time of Harmel Kaur, Gurdial Singh gets back the land from her he would pay her Rs.50/- per month as maintenance.
5. If Gurdial Singh died before Harmel Kaur, then, in that case, Harmel Kaur would be entitled to get her share from the said land as a legal heir in accordance with the law.
6. The maintenance allowance of Rs.25/- per month already being paid to her, shall be stopped.
7. Harmel Kaur shall also be entitled to keep her residence at V.Mehraj in the house belonging to Gurdial Singh.
8. Harmel Kaur also thumb marked this agreement/compromise and agreed that in case the land is taken away back by Gurdial Singh, then she would get Rs.50/- per month as maintenance from him."

Exh.P-3 is dated December 3, 1963.

Gurdial Singh died on July 30, 1981.

Harmel Kaur executed four sale deeds in November, 1987 and August, 1988 in favour of Defendant Nos.1 to 3 (appellants herein) whereunder she sold 70 kanals and 19 marlas of land out of the suit lands for a consideration of Rs.1,62,200/-. On that basis, mutation was also effected in the name of the appellants.

In January, 1991 the present suit was filed. The first plaintiff claimed to be the wife (second wife) of Gurdial Singh while Defendant Nos.2 to 4 claimed to be their daughters. According to the plaintiffs, the first plaintiff was married to Gurdial Singh on March 21, 1946. They claimed a 7/8th share in the suit lands (including 70 kanals and 19 marlas sold to the appellants) under and in accordance with the Hindu Succession Act. According to them, Harmel Kaur was entitled only to a 1/8th share. The defendants denied that the first plaintiff was married to Gurdial Singh or that Plaintiff Nos.2 to 4 are the daughters of Gurdial Singh. This issue is, however, concluded by the finding of the first appellate court to the effect that the first plaintiff was indeed married to Gurdial Singh and that Plaintiff Nos.2 to 4 are their daughters.

The courts below have decreed the suit holding that under the compromise aforementioned, only a life interest was created in Harmel Kaur and not an absolute interest. According to them (the High Court dismissed the second appeal in limine), it is sub-section (2) of Section 14 of the Hindu Succession Act that applies herein and not sub-section (1). The correctness of the said view is questioned by the defendants-appellants. Section 14 of the Hindu Succession Act, 1956 reads as follows:

"14. Property of a female Hindu to be her absolute property.-- (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 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 a restricted estate in such property."

According to sub-section (1), any property possessed by a female Hindu shall be held by her as full owner thereof and not as a limited owner irrespective of the fact whether the said property was acquired by her before the commencement of the Act or after the commencement of the Act. Explanation to sub-section (1) elaborates the meaning and content of the expression "property" in

sub-section (1). It includes property given in lieu of maintenance.

Section 14 and the respective scope and ambit of sub- section (1) and (2) has been the subject-matter of a number of decisions of this Court, the most important of which is the decision in *V.Tulasamma v. V.Sesha Reddi* (1977 (3) S.C.C.99)*. The principles enunciated in this decision have been reiterated in a number of decisions later but have never been departed from. According to this decision, sub- section (2) is 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. It has also been held that where the property is acquired by a Hindu female in lieu of right of maintenance inter alia, 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 to her prescribes a restricted estate in the property. Applying this principle, it must be held that the suit lands, which were given to Harmel Kaur by Gurdial singh in lieu of her maintenance, were held by Harmel Kaur as full owner thereof and not as a limited owner notwithstanding the several restrictive covenants

----- *Reference may also be had to the decision in *Jagannathan Pillai v. Kunjithapadam Pillai* (1987 (2) S.C.C.572) which deals with post-Act acquisition of property by a female Hindu.

accompanying the grant. [Also see the recent decision of this Court in *Mangat Mal v. Punni Devi* (1995 (6) S.C.C.88) where a right to residence in a house property was held to attract sub-section (1) of Section 14 notwithstanding the fact that the grant expressly conferred only a limited estate upon her.] According to sub-section (1), where any property is given to a female Hindu in lieu of her maintenance before the commencement of the Hindu Succession Act, such property becomes the absolute property of such female Hindu on the commencement of the Act provided the said property was "possessed" by her. Where, however, the property is given to a female Hindu towards her maintenance after the commencement of the Act, she becomes the absolute owner thereof the moment she is placed in possession of the said property (unless, of course, she is already in possession) notwithstanding the limitations and restrictions contained in the instrument, grant or award whereunder the property is given to her. This proposition follows from the words in sub-section (1), which insofar as is relevant read:

"Any property possessed by a female Hindu.....after the commencement of this Act shall be held by her as full owner and not as a limited owner". In other words, though the instrument, grant, award or deed creates a limited estate or a restricted estate, as the case may be, it stands transformed into an absolute estate provided such property is given to a female Hindu in lieu of maintenance and is placed in her possession. So far as the expression "possessed" is concerned, it too has been the subject-matter of interpretation by several decisions of this Court to which it is not necessary to refer for the purpose of this case.

The learned counsel for the respondents-plaintiffs relied upon a recent decision of this Court in *Gumpha v. Jaibai* (1994 (2) S.C.C.511) in support of his contention that in the facts of this case, it is sub-section (2) of Section 14 and not sub-section (1) that is attracted. But that was a case where certain property was given to a Hindu female under a Will. The Bench held that since Will is referred to only in sub-section (2) and not in sub-section (1), it is sub-section (2) that is attracted in the case of a property bequeathed under a Will. Since, the suit lands were given to Harmel Kaur under a compromise - and not under a Will - the principle of the said decision has no application herein.

For the above reasons, we hold that the said lands became the absolute property of Harmel Kaur the moment she was placed in possession thereof. (It is not disputed that the said property was indeed placed in her possession and that she was in possession and enjoyment thereof from the date of the aforesaid compromise.) Once this is so, the suit must fail. The courts below were in error in holding that because the compromise whereunder the said lands were given to Harmel Kaur towards her maintenance, created a life estate and a restricted estate, sub-section (1) of Section 14 is not attracted and that it is sub-section (2) that is attracted here.

The appeal is allowed. The judgment and decree of the trial court as affirmed by the first and second appellate courts are set aside and the suit is dismissed. There shall be no order as to costs.