

## **Jagannathan Pillai vs Kunjithapadam Pillai & Ors on 21 April, 1987**

**Equivalent citations: 1987 AIR 1493, 1987 SCR (2)1070, AIR 1987 SUPREME COURT 1493, 1987 (2) SCC 572, (1987) 2 MAD LJ 1, (1987) 100 MAD LW 570, (1987) MAH LJ 544, 1987 BBCJ 127, (1987) 13 ALL LR 594, (1987) MPLJ 335, (1987) 2 CURLJ(CCR) 481, (1987) 2 HINDULR 246, (1987) 1 LS 63, (1987) 1 APLJ 83, (1987) 2 CIVLJ 226, (1987) MARRILJ 433, (1987) 2 JT 235 (SC)**

**Author: M.P. Thakkar**

**Bench: M.P. Thakkar, B.C. Ray**

PETITIONER:  
JAGANNATHAN PILLAI

Vs.

RESPONDENT:  
KUNJITHAPADAM PILLAI & ORS.

DATE OF JUDGMENT21/04/1987

BENCH:  
THAKKAR, M.P. (J)  
BENCH:  
THAKKAR, M.P. (J)  
RAY, B.C. (J)

CITATION:  
1987 AIR 1493                      1987 SCR (2)1070  
1987 SCC (2) 572                JT 1987 (2) 235  
1987 SCALE (1)861  
CITATOR INFO :  
R                1987 SC2251 (12)  
D                1989 SC1179 (16)  
D                1991 SC1581 (10,14)

ACT:  
Hindu Succession Act, 1956: S. 14(1)--Hindu widow regains possession of property subsequent to commencement of Act---Nature of her right or interests--Whether full or limited owner.

HEADNOTE:

Section 14(1) of the Hindu Succession Act, 1956 provides that any property possessed by a female Hindu, whether enquired before or after the commencement of the Act shall be held by her as full owner thereof and not as a limited owner. The Explanation to the sub-section included property acquired by a female Hindu by purchase within the expression 'property.'

The Hindu widow, in the instant case, who had acquired a limited estate from her husband by reason of his death was not in possession on the date of the enforcement of the Act, she having transferred the property in favour of an alienee, But, later the possession was restored to her upon the original alienee reconveying the property to her, reversing the transaction. Her right to the said property was assailed by the appellant before the Madras High Court and a question arose as to whether upon the reconveyance of the very property. which she had alienated, after the enforcement of the Act she would become full owner in respect of such a property by virtue of s. 14(1) of the Act.

The High Court following its earlier view in Chinnakolandai Goundan v. Thanji Gounder, (ILR 1966 I Madras 326) and that of Punjab High Court in Teja Singh v. Jagat Singh, (AIR 1964 Punjab 403), Bombay High Court in Ramgowda Aunagowda v. Bhausahab, (ILR 52 Bom. 1) and Gujarat High Court in Champa v. Chandrakant (AIR 1973 Gujarat 227), held that she would become an absolute owner of such a property in the aforesaid situation.

In this appeal by certificate. it was contended for the appellant. relying on the view pronounced by the Orissa High Court in Ganesh Mahanta v. Sukria Bewa, (AIR 1963 Orissa 167) and Andhra Pradesh High Court in Medicherla Venkataratnam v. Siddani Palamma, 1970 II Andhra Weekly Reporter 264), that s. 14(1) of the Act does not come

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into play in the case of a retransfer of the property to the widow subsequent to the commencement of the Act, as the transferee or the donee, who had only a limited interest. cannot transfer a title higher than the title that they themselves had in the property.

Dismissing the appeal, the Court,

HELD: 1. A Hindu woman is entitled to become an absolute owner of the property which she had alienated, upon its reconveyance to her by the transferee after the enforcement of the Hindu Succession Act, 1956 by virtue of s. 14(1). [1082G; 1075B]

2.1 The whole purpose of s. 14(1) is to make a widow who has a limited interest a full owner in respect of the property in question regardless of whether the acquisition was prior to or subsequent to the commencement of the Act. It comes into operation at the point of time when the right of the Hindu widow to the property is called into question. All that has to be shown by her then is that she had acquired the property and that she was possessed of the

property. Once it is shown by her that she was possessed of the property on that date in the eyes of law the property held by her would be held by her as "full owner" and not as limited owner. [1079G; 1075GH; 1077BC]

2.2 Possession, physical or constructive or in legal sense, on the date of coming into operation of the Act is not the sine-qua-non for the acquisition of full ownership in property by the Hindu female. The expression "possessed of" used in s. 14(1) pertains to the acquisition of a right or interest in the property and not to physical possession acquired by force or without any legal right. The expression "whether acquired before or after the commencement of the Act" used in s. 14(1) makes it evident that any property possessed by a Hindu female whether acquired before or after the commencement of the Act, would be held by her as a full owner thereof and not as a limited owner. If the legislature had not contemplated a Hindu widow becoming possessed of a property by virtue of an acquisition after the commencement of the Act the aforesaid expression would not have been used. [1076FG; 1081C; 1076CD; 1081AB]

2.3 When the Hindu female in the instant case bought the property from the alienee to whom she had sold it prior to the enforcement of the Act, she had acquired the property within the meaning of the explanation to s. 14(1) of the Act. The transaction by which the vendee of the Hindu female had acquired an interest in the said property was reversed and she was restored to the position prevailing before the 1072

transaction took place. In the eyes of law the transaction stood obliterated or effaced. Thus, on the date on which her right to the property was called into question, she was possessed of the property which she had inherited from her husband, she having by then reacquired and regained what she had lost, and her limited right had natured into a full ownership in view of s. 14(1) of the Act. [1077C, EF; 1078C]

3. By the reversal of the transaction no right of the reversioner was affected, for he had merely a spes successions in the property and nothing more. His possible chance of succeeding upon the death of the Hindu female disappeared from the horizon as soon as what she had temporarily parted with was restored to her. Therefore, whether a challenge was made during her life-time or it was made after her death, if the question arose as to what was the nature of interest in the property held by the concerned Hindu female after the reversal of the transaction the answer would be that she had a 'full ownership' and not a 'limited ownership'. [1078DE; 1077H-1078A]

4. If the transferee from the concerned Hindu female had transferred his right, title and interest in the property to a third person instead of transferring it back to her, the principle that the transferor cannot transmit a better title or a title higher than that possessed by him at the given time would have come into play. Not otherwise. The transac-

tion having been reversed the Hindu widow became re-possessed of the property which she had possessed prior to the transfer to the original alienee or the donee and her right straightaway matured into full ownership by virtue of s. 14(1). [1078B; 1079DE]

5. The case of the widow who had temporarily lost the right in the property by virtue of the transfer in favour of the alienee or the donee cannot be equated with that of a stranger. The Act is intended to benefit her. And when she becomes possessed of the property, having regained precisely that interest which she had temporarily lost during the duration of the eclipse, s. 14(1) would come to her rescue which would not be the matter in the case of a stranger who cannot invoke s. 14(1). [1080F]

Kotturuswamy v. Veeravva, (AIR 1959 S.C. 577) distinguished.

Chinnakolandai Goundan v. Thanji Gounder, (ILR 1966 I Madras 326); Teja Singh v. Jagat Singh, (AIR 1964 Punjab 403); Ramgowda Aunagowda v. Bhausahab, (ILR 52 Bom. 1) and Champa v. Chandrakant, (AIR 1973 Gujarat 227), approved. 1073

Ganesh Mahanta v. Sukria Bewa, (AIR 1963 Orissa 167) and Medicherla Venkataramam v. Siddani palamma, (1970 II Andhra Weekly Reporter 264), overruled.

#### JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1196 of 2973.

From the Judgment and Decree dated 20.9.1971 of the Madras High Court in Appeal No. 425 of 1964.

T.S. Krishnamoorthy Iyer. K. Ram Kumar and K. Ram for the Appellant.

S.T. Desai, K. Ramamurthy and A.T.M. Sampath for Respondents No. 1 and 2.

Rajendra Chowdhary for the Respondent No. 3 to 5. The Judgment of the Court was delivered by THAKKAR. J. Under the same law<sup>1</sup> in an identical fact-situation, a Hindu widow who has inherited property in Orissa or Andhra Pradesh would be a 'limited owner' and would not become an 'absolute owner' thereof whereas if she has inherited property in Madras, Punjab, Bombay or Gujarat she would become an 'absolute owner'. That is to say, in a situation where a Hindu widow regains possession of a property (in which she had a limited ownership) subsequent to the commencement of the Act<sup>2</sup> upon the retransfer of the very same property to her by the transferee in whose favour she had transferred it prior to the commencement of the Act. This incongruous situation has arisen because of an interpretation and application of Section 14(1)<sup>3</sup> of the Hindu Succession Act (Act) in the context of the

1. Section 14(1) of Hindu Succession Act of 1956 2. The Act came into force on June 17, 1956.

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3. "Section 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 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."

aforesaid fact-situation the High Courts of Orissa<sup>4</sup> and Andhra Pradesh<sup>5</sup> have proclaimed that she would be only a 'limited owner' of such property on such retransfer whereas the High Courts of Madras<sup>6</sup>, Punjab<sup>7</sup>, Bombay<sup>8</sup> and Gujarat<sup>9</sup> have taken a contrary view and have pronounced that she would become an 'absolute owner' of such a property in the aforesaid situation. We have therefore to undertake this exercise to remove the unesthetic wrinkles from the face of law to ensure that a Hindu widow has the same rights under the same law regardless of the fact as to whether her property is situated within the jurisdiction of one High Court or the other.

The appellant who unsuccessfully canvassed before the High Court of Madras that the view propounded by the Orissa and Andhra Pradesh High Courts deserved to be preferred to the view taken by the other four High Courts, has approached this Court by way of the present appeal by a certificate granted under Article 133(1)(a) of the Constitution of India that the matter involves a substantial question of law. The typical facts in the backdrop of which the problem has to be viewed are :-

(1) A Hindu female acquired a property, say by reason of the death of her husband, before the commencement of the Act (i.e. before June 17, 1956).

(2) What she acquired was a widow's estate as understood in shastric or traditional Hindu Law.

(3) She lost the possession of the property on account of a transaction whereby she trans-

ferred the property in favour of an alienee by a registered document of 'sale' or 'gift'.

4. Ganesh Mahanta v. Sukria Rewa (AIR 1963 Orissa 167).

5. Medicherla Venkataratnam v. Siddani Palamma, (1970 II Andhra Weekly Reporter 264).

6. Chinnakolandai Goundan v. Thanji Gounder, (ILR 1966 I Madras 326).

7. Teia Singh v. Jagat Singh, (AIR 1964 Punjab 403).

8. Ramgowda Aunagowda v. Bhausahab, (ILR 52 Bom. 1).

9. Champa v. Chandrakant, (AIR 1973 Gujarat 227).

(4) The property in question was retransferred to her by the said alienee 'after' the enforcement of the Act by a registered document thus restoring to the widow the interest (such as it was) which she had parted with earlier by re- versing the original transaction.

It is in this factual background that the question will have to be examined as to whether upon the reconveyance of the very property which she had alienated after enforcement of the Act, she would become a full owner in respect of such a property by virtue 'of Section 14(1) of the Hindu Succession Act, 1956 (Act). Be it realized that the law has been set- tled by this Court that the limited estate or limited owner- ship of a Hindu female would enlarge into an absolute estate or full ownership of the property in question in the follow- ing factsituation:

1. 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.

2. Even if the property in question was possessed by her in lieu of her right to maintenance as against the estate of her deceased husband or the joint family property, she would be entitled to become a full or absolute owner having regard to the fact that the origin of her right was traceable to the right against her husband's estate, The problem which has arisen in the present appeal is in the context of a fact-situation where while the widow ac-

quired a limited estate from her husband she was not in possession on the date of the enforcement of the Act viz. June 17, 1956, But the possession was restored to her upon the original alienee reconveying the property to her. On an analysis of Section 14(1) of the Hindu Succession Act of 1956, it is evident that the Legislature has abol- ished the concept of limited ownership in respect of a Hindu female and has enacted that any property possessed by her would thereafter be held by her as a full owner. Section 14(1) would come into operation if the property at the point of time when she has an occasion to claim or assert a title thereto. Or, in other words, at the point of time when her right to the said property is called into question. The legal effect of Section 14(1) would be that after the coming into operation of the Act there would be no property in respect of which it could be contended by anyone that a Hindu female is only a limited owner and not a full owner. (we are for the moment not concerned with the fact that sub-section (2) of section 14 which provides that Section 14(1) will not prevent creating a restricted estate in favour of a Hindu female either by gift or will or any instrument or decree of a Civil Court or award provided the very document creating title unto her confers a restricted estate on her). There is nothing in Section 14 which supports the proposition that a Hindu female should be in actual physical possession or in con- structive possession of any property on the date of the coming into operation of the Act. The expression

'possess , ' has been used in the sense of having a right to the property or control over the property. The expression 'any property possessed by Hindu female whether acquired before or after the commencement of the Act' on an analysis yields to the following interpretation:

.15 (1) Any property possessed by a Hindu female acquired before the commencement of the Act will be held by her as a full owner thereof and not as a limited owner. (2) Any property possessed by a Hindu female acquired after the commencement of the Act Will be held as a full owner thereof and not as a limited owner.

Since the Act in terms applies even to properties possessed by a Hindu female which are acquired 'after' the commence- ment of the Act, it is futile to contend that the Hindu female shall be in 'possession' of the property 'before' the commencement of the Act. If the property itself is acquired 'after' the commencement of the Act, there could be no question of the property being either in physical or con- structive possession of the Hindu female 'before' the coming into operation of the Act. There is, therefore, no escape from the conclusion that possession, physical or construc- tive or in a legal sense, on the date of the coming into operation of the Act is not the sine-qua-non for the acqui- sition of full ownership in property. In fact, the intention of the Legislature was to do away with the concept of limit- ed ownership in respect of the property owned by a Hindu female altogether. Section 4 of the Act (it needs to be emphasized) provides that any text, rule or interpretation of Hindu Law or custom or usage as part of that law in force immediately before the commencement of this Act, shall cease to have effect with respect to any matter for which provi- sion is made in the Act. The legislative intent is there- fore, abundantly loud and clear.

To erase the injustice and remove the legal shackles by abolishing the concept of limited estate, or the women's or widow's estate once and for all. 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 notwith- standing the position obtaining under the traditional Hindu law. Once it is shown that at the point of time when the question regarding title to property held by a Hindu female arises, she was 'possessed' of the property on that date, in the eye of law, the property held by her would be held by her as 'full owner' and not as 'limited owner'. In other words, all that has to be shown by her is that she had acquired the property and that she was 'possessed' of the property at the point of time when her title was called into question. When she bought the property from the alienee to whom she had sold the property prior to the enforcement of the Act, she 'acquired' the property within the meaning of the explanation to Section 14(1) of the Act. The right that the original alienee had to hold the property as owner (subject to his right being questioned by the reversioner on the death of the female Hindu from whom he had purchased the property) was restored to her when she got back the right that she had parted with. Whatever she had lost 'earlier', was 'now' regained by her by virtue of the transaction. The status-quo-ante was restored in respect of her interest in the said property. In the eye of law, therefore, the trans- action by which the vendee of the Hindu female acquired an interest in the said property was 'reversed' and the Hindu female was restored to the position prevailing before the transaction took place. In other words, in the eye of law the transaction stood obliterated or effaced. What was 'done' by virtue of the document executed in favour of the transferee was 'undone'. Such would be the consequence of a

retransfer by the alienee in favour of a Hindu female from whom he had acquired an interest in the property in question. Thus on the date on which her right to the property was called into question, she was 'possessed' of the property which she had inherited from her husband she having by then re-acquired and regained what she had lost. And by virtue of the operation of Section 14(1) of the Act the limitation which previously inhered in respect of the property disappeared upon the coming into operation of the Act. It is no longer open to anyone now to contend that she had only a 'limited' ownership in the said property and not a 'full' ownership, the concept of limited ownership having been abolished altogether, with effect from the coming into operation of the Act.

Whether a challenge was made during her lifetime or it was made after her death. if the question arose as to what was the nature of interest in the property held by the concerned Hindu female after the reversal of the transaction the answer would be that she had a 'full' ownership and not a 'limited' ownership. It would have been a different matter if the transferee from the concerned Hindu female had transferred his right, title and interest in the property to a third person instead of transferring it back to her. In that event the principle that the transferor cannot transmit a better title or a title higher than that possessed by the transferor at the given time would come into play. Not otherwise. 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 reemerged on the disappearance of the eclipse. In other words, the right which was under slumber came to be awakened as soon as the sleep induced by the transaction came to an end. By the reversal of the transaction no right of the reversioner was affected, for he had merely a spes successions in the property and nothing more. His possible chance of succeeding upon the death of the Hindu female disappeared from the horizon as soon as what she had temporarily parted with was restored to her.

The proponents of the view canvassed by the appellant placed strong reliance on the decision rendered by a learned Single Judge of the Orissa High Court in *Ganesh Mahanta v. Sukria Bewa*, A.I.R. 1963 Orissa 167 and the decision of the Andhra Pradesh High Court in *Medicherla Venkataratnam v. Siddani Palamma and Ors.*, A.W.R. 1970(2) 264 wherein the Andhra Pradesh High Court has concurred with the view of the Orissa High Court, The basis of the reasoning is reflected in the following passage from *Ganesh Mahanta's* case:

"Section 14(1) does not purport to enlarge the right, title or interest of the alienee from widow with regard to the transfers effected prior to the commencement of the Act. A donee from the widow prior to the commencement of the Act acquires only a widow's estate in the gifted property and even if the donee retransfers the property in favour of the widow after the commencement of the Act, the widow would acquire only a limited interest and not an absolute interest in the property as the donee cannot transmit any title higher than what he himself had."



It appears that the Orissa and the Andhra Pradesh High Courts have been carried away by the argument that the donee or the transferee who retransfers the property to the widow cannot transmit a title higher than the title that they themselves had in the property. In substance, the argument is that as the transferee or the donee had only a limited interest, what he can transmit to the widow is a limited interest. This argument postulates that Section 14(1) of the Act does not come into play in the case of a retransfer (by the donee or the transferee as the case may be), to the widow subsequent to the commencement of the Act. There is a basic fallacy in proceeding on the assumption that Section 14(1) has no impact or that the provision has no role to play in case of such a retransfer. This line of reasoning overlooks the fact that upon retransfer to the widow, the original transaction is obliterated and what transpired by virtue of the consequence of the original transfer stands reversed. The resultant position is that the widow is re- stored to the original position. Section 14(1) would not be attracted if the widow was not possessed of the property after the coming into force of the Act. But in view of the reversal of the transaction, the widow becomes possessed of the property which she had possessed prior to the transfer to the original alienee or the donee. And Section 14(1) straightaway comes into play. By virtue of the reversal of the original transaction, her rights would have to be ascer- tained as if she became possessed of the property for the first time, after the commencement of the Act. It is now well settled that even if the widow has acquired the inter- est in the property and is possessed of the property after the commencement of the Act, her limited right would ripen or mature into an absolute interest or full ownership. The question that has to be asked is as to whether the widow became possessed of the property by virtue of the acqui- sition of interest subsequent to the operation of the Act and whether such interest was a limited interest. The whole purpose of Section 14(1) is to make a widow who has a limit- ed interest a full owner in respect of the property in question regardless of whether the acquisition was prior to or subsequent to the commencement of the Act. On the date on which the retransfer took place, she became possessed of the property. She became possessed thereof subsequent to the commencement of the Act. In the result her limited interest therein would enlarge into an absolute interest, for, after the commencement of the Act any property possessed of and held by a widow becomes a property in which she has absolute interest and not a limited interest, the concept of limited interest having been abolished by Section 14(1) with effect from the commencement of the Act. The Orissa High Court and the Andhra Pradesh High Court have fallen in error in testing the matter from the stand point of the alienee or the donee who retransfers the property. The High Court posed the question as to whether they would be entitled to full owner- ship in view of Section 14(1), instead of posing the ques- tion as to whether the widow who becomes possessed of the property after the commencement of the Act would be entitled to claim that her limited interest had enlarged into an absolute interest. Of course, Section 14(1) is not intended to benefit the alienee or the donee, but is intended and designed to benefit the widow. But the question has to be examined from the perspective of the widow who becomes possessed of the property by virtue of the acquisition pursuant to the retransfer. The Andhra Pradesh High Court has also fallen in error in accepting the fallacious argu- ment that the widow would be in the position of a stranger to whom the property was reconveyed or retransferred. This fallacy is reflected in the following passage:

" .... Therefore reconveyance will not revive her original right in the property and she will be holding the estate reconveyed just like any other stranger alienee, for the lifetime of the alienor widow, though she happens to be that widow, and there can be

no question of one alienation cancelling the other and the status-quo-ante, the widow's alienation being restored."

The case of the widow who had temporarily lost the right in the property by virtue of the transfer in favour of the alienee or the donee can not be equated with that of a stranger by forgetting the realities of the situation. Surely, the Act was intended to benefit her. And when the widow becomes possessed of the property, having regained precisely that interest which she had temporarily lost during the duration of the eclipse, Section 14(1) would come to her rescue which would not be the matter in the case of a stranger who cannot invoke Section 14(1). A further error was committed in proceeding on the mistaken assumption that the decision in *Kotturuswamy v. Veeravva*, A.I.R. 1959 S.C. 577 supported the point of view which found favour with the Orissa and the Andhra Pradesh High Courts. In *Kotturuswamy's* case the alienation had taken place before the commencement of the Act and the widow had 'trespassed' on the property and had obtained physical possession as a trespasser without any title. It was not a case where the widow had regained possession lawfully and become entitled to claim the benefit of Section 14(1) having become possessed of the property by way of a lawful acquisition subsequent to the commencement of the Act. It was overlooked that Section 14(1) in terms used the expression "whether acquired before or after the commencement of the Act". If the legislature had not contemplated a widow becoming possessed of a property by virtue of an acquisition after the commencement of the Act, the aforesaid expression would not have been used by the legislature. The Orissa and the Andhra Pradesh High Courts have failed to give effect to these crucial words and have also failed to apply the principle in *Kotturuswamy's* case properly, wherein the widow obtained possession as a trespasser. In fact the expression "possessed of" pertains to the acquisition of a right or interest in the property and not to physical possession acquired by force or without any legal right. The ratio in *Kotturuswami's* case was therefore misunderstood and misconceived by the Orissa and the Andhra Pradesh High Courts. We agree with the reasoning of the Madras High Court in *Chinnakolandai v. Thanji*, [1965] 2 M.L.J. 247: A.I.R. 1965 Mad. 497, wherein Ramamurthi, J. has made the point in a very lucid manner in the following passage:

"With respect, I am unable to agree with this view, as the entire reasoning is based upon the view that there is no difference between a reconveyance in favour of the widow herself and alienation in favour of the stranger. In my opinion, there is all the difference between a case of annulment of a conveyance by consent of both the parties and a case of a subsequent alienation by the alienee in favour of a stranger. In the former case the effect of the alienation is completely wiped out and the original position is restored. This distinction has not been noticed in the decision of the Orissa High Court. The acceptance of the contention Urged by learned counsel for the appellant would lead to startling results. Take for instance an un-authorised alienation by a guardian. If some cloud is cast on the validity of the alienation, and if the alienee, not willing to take any risk till the attainment of majority by the minor, conveys back the property to the guardian, it would not be open to the guardian to contend that he had acquired the voidable title of the alienee. In other words, he cannot contend as against the quondam minor that the income from the property would be his, and that till the minor takes proceedings for setting aside the alienation

the guardian should be deemed to have acquired the right, title and interest of the alienee. Such a contention on the face of it is untenable. The instance of an alienation by a trustee or an executor may also be considered. If after the alienation by the trustee or executor the beneficiary raises some objection about, the validity of the alienation whether well rounded or ill turned and if the alienee who is not prepared to take any risk conveys back the property to the trustee or the executor as the case may be it cannot possibly be contended that the trustee or the executor got back the property in any right or character other than in which it was originally alienated. As a result of the reconveyance the property would form part of the trust estate. In all these cases the alienor suffers under a legal disability from holding the property in any other capacity. It is needless to multiply instances. I am therefore clearly of the opinion that there is nothing in law to prevent an alienation being completely nullified as if it never took effect provided the alienor and the alienee agree to such a course. The position is a fortiori where the title conveyed to the alienee is a voidable one. It cannot be disputed that when the reversioner files the suit it is open to the alienee to submit to a decree. After such a declaratory decree is passed, there is nothing in Hindu law which compels or obliges the alienee to retain and keep the property himself and hand it over to the reversioner. It is certainly open to him, to respect the decree and convey back the property to the widow even before her death. It is obvious that what the alienee can do after the termination of the suit can equally be done during its pendency. Surely the alienee is not a trustee for the reversioner to keep the property in trust and deliver the property on the death of the widow."

Our own reasons we have already articulated. The reasoning unfolded in the foregoing passage, we fully and wholeheartedly endorse. In the result we uphold the view that in such circumstances the concerned Hindu woman is entitled to become an absolute owner of the property in question. The appeal fails and is dismissed. No costs.

P.S.S.  
dismissed.

Appeal