Ajit Kaur @ Surjit Kaur vs Darshan Singh (Dead) Through Lrs. on 4 April, 2019

Equivalent citations: AIR 2019 SUPREME COURT 2122, 2019 (13) SCC 70, AIRONLINE 2019 SC 304, (2019) 136 ALL LR 292, (2019) 145 REVDEC 697, (2019) 201 ALLINDCAS 70, (2019) 2 ALL RENTCAS 17, (2019) 2 CLR 613 (SC), (2019) 2 CURCC 110, (2019) 2 RECCIVR 786, (2019) 3 CIVLJ 390, (2019) 3 RAJ LW 2618, (2019) 5 SCALE 727, AIR 2019 SC (CIV) 1611

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Bench: Ajay Rastogi, A.M. Khanwilkar

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(s). 226 OF 2010

AJIT KAUR @ SURJIT KAUR ….Appellant(s)

VERSUS

DARSHAN SINGH(DEAD) THROUGH LRS.& ORS. ..Respondent(s)

JUDGMENT

Rastogi, J.

1. This is the defendant's appeal by special leave against the judgment of the High Court of Punjab and Haryana at Chandigarh dated 28th July, 2004 and arises in the following circumstances.

2. Original plaintiffs, Darshan Singh son of Bhana, and Amriti and Udhi alias Iqbal Kaur, daughters of Bhana filed a suit for possession of the subject land in dispute. It was claimed by the plaintiffs that Bhana, son of Moti was the original owner of the subject properties in dispute. The plaintiffs along with one Gurdev Kaur were the children of aforesaid Bhana from his first wife Bhago and after the death of his wife(Bhago), Bhana was remarried to Smt. Banti but because of strained relations of

Bhana and Smt. Banti, they started living separately. There was even a litigation between them. Bhana and Smt. Banti had a daughter, namely, Ajit Kaur(appellant) from the aforesaid wedlock. To settle the dispute between them, Bhana parted the suit land to Smt. Banti by way of gift for her maintenance way back in the year 1950. In furtherance thereof, mutation was also entered in favour of Smt. Banti bearing no. 3813 sanctioned on 25 th February, 1950. The aforesaid gift came to be challenged by the original plaintiff Darshan Singh in a Civil Suit No. 103/1953 for declaration under the customary law. It was claimed by him that the aforesaid gift by late Bhana in favour of Smt. Banti qua the ancestral property would not affect the reversionary rights of Darshan Singh(original plaintiff). The aforesaid civil suit filed at the instance of Darshan Singh was decreed by the learned trial Court vide judgment dated 30 th June, 1954 and it was held that the aforesaid gift by late Bhana in favour of Smt. Banti would not affect the reversionary rights of Darshan Singh and would operate only during the life time of Bhana. The Civil Appeal No. 101/1954 preferred by Banti against the aforesaid judgment and decree was dismissed by learned District Judge vide judgment dated 29th November, 1954 and the Regular Second Appeal No. 193/1955 filed at her instance(Smt. Banti) came to be dismissed by the High Court on 3rd November, 1959. It was claimed that Smt. Banti was to continue to have the rights in the property only during the life time of Bhana and was not an absolute owner. Since Bhana died on 27th March, 1973 and prior to his death, he had executed a registered will dated 5th January, 1973 whereby he bequeathed his estate in favour of plaintiffs Darshan Singh and others by excluding Smt. Banti and Smt. Ajit Kaur, original (defendant no. 1) and (defendant no. 25) appellant herein and other daughter Gurdev Kaur. In reference to the aforesaid will dated 5 th January, 1973, Civil Suit No. 15/1975 was filed by the plaintiff for possession. The appellant contested the suit and it was claimed by her that Banti was the absolute owner of the suit property. She even denied the earlier litigation between the parties whereby reversionary rights of Darshan Singh came to be upheld. The will as claimed by the plaintiffs dated 5 th January, 1973 was also contested.

3. On the other hand, the appellant in separate litigation between the parties reached upto the Regular Second Appeal no. 933/1984 and the validity of the will dated 5th January, 1973 came to be upheld by the High Court vide judgment dated 28 th July, 2004 and the Special Leave Petition(Civil) no. 24724/2004 preferred at the instance of the appellant came to be dismissed as not pressed. According to the will dated 5th January, 1973, the original plaintiffs became entitled to claim the property of Bhana(deceased) including the land in dispute to the exclusion of the present appellant. It was stated in the will dated 5th January, 1973 that Smt. Banti was residing separately for almost 20 years and questioned her character having illegitimate relations with Maal Singh, son of Nihal Singh, r/o Bada Pind and despite that, the testator has taken care of her maintenance. The will dated 5th January, 1973 came to be executed in supersession of the earlier will dated 11 th April, 1956 and for the aforesaid reason, it was stated by the testator that the entire property after his death be devolved to his daughter Smt. Amriti, Udi alias Iqbal Kaur and son Darshan Singh in three equal shares.

4. The trial Court in the instant proceedings held that the suit land had been allotted in lieu of the original land during the consolidation proceedings. Both the wills set up by the plaintiffs dated 5th January, 1973 and the defendants dated 21 st February, 1973 were held to be executed by Bhana. Learned trial Court further recorded a finding that Banti had become absolute owner of the suit

property after the commencement of the Hindu Succession Act, 1956 (hereinafter being referred to as "Act 1956) and, therefore, the plaintiffs could not take any benefit of the earlier decree and accordingly dismissed the suit filed by the plaintiffs.

5. On reappraisal of the evidence on record, the appellate Court reversed the findings of the trial Court with regard to Banti having become absolute owner of the suit property on the basis of an oral gift executed by Bhana in the year 1950 and the gift came to be set aside and held that Smt. Banti could not be held to be the absolute owner of the suit property even after the commencement of the Act, 1956 inasmuch as her title to the suit property was to operate only during the life time of Bhana who died on 27 th March, 1973. The judgment of the Court of appeal came to be challenged at the instance of the appellant(defendant) and second appeal before the High Court also came to be dismissed under the impugned judgment dated 28th July, 2004 which is the subject matter of challenge in the instant appeal.

6. Mr. J.M. Khanna, learned counsel for the appellant submits that once this fact is admitted by the parties that Smt. Banti was the widow of Bhana whose property is in dispute and as such formed coparcenary and was entitled to 1/3rd share after the enforcement of the Act, 1956 and the learned appellate Court has erred in relying upon a will dated 5 th January, 1973 without taking note of a subsequent will executed by the testator dated 21 st February, 1973 and the finding which has been recorded by the first appellate Court in reference to a later will dated 21 st February, 1973 is perverse and no adverse inference could be drawn and it needs to be reviewed by this Court.

7. Learned counsel further submits that the progeny of Bhana was consisting of one son and three daughters from the first wife since deceased and another daughter alongwith widow from the second marriage. If plainly the succession stood opened after the enforcement of Act, 1956 then even one son and three daughters from first wife would get 2/3rd of the property and widow and one daughter i.e. from second marriage would get 1/3 rd property. So far as the finding in reference to the will dated 5 th January, 1973 is concerned, it was never proved or produced before the trial Court and could not be agitated at a belated stage.

8. Learned counsel submits that the first appellate Court as well as the High Court in second appeal has misconstrued the law applicable to the coparcenary property and right of the female to succeed would be defeated by execution of a Sham sale deed and the same had to be questioned during the life time of the deceased Bhana and the limitation is only three years. Since the right to succeed to deceased Bhana arose only after his demise in the year 1973 and the suit for possession could be filed within 12 years of the same especially when the appellant was in possession of a part of the land left by the deceased.

9. Learned counsel submits that the validity of the will dated 5 th January, 1973 executed by Bhana could not be effecting the right of the successor after the enforcement of the Hindu Succession Act, as Bhana had gifted the property to the appellant and the will could not operate qua that property even if it is assumed to be valid. The property gifted or otherwise given to the separated wife i.e. Banti before the enforcement of the Act, 1956 for maintenance of the separated wife now widow would hold the absolute right over the property after the Act, 1956 has come into force.

10. Learned counsel further submits that no will could be executed by Bhana regarding the aforesaid ancestral property to his progeny since the subject property was in possession of Banti, in view of maintenance and irrespective of the nature of document/statement made by Bhana, the property would become absolute property of Banti on enforcement of Act, 1956 on 17 th June, 1956. The reversionary rights of the respondents'/plaintiffs' declaration suit do not become effective when the succession opened after the enforcement of the Hindu Succession Act and the decree is only to be effective if the reversionary rights existed when the succession opened on the death of Bhana the Karta and co□parcener. The property does not revert to the co□parcenary or Hindu joint family or to Bhana as Karta and after the enforcement of Act, 1956, the succession is to be governed by the provisions of Hindu Succession Act and if the reversionary who have got the decree and he is not the successor in accordance with the Hindu Succession Act or Hindu Law, he cannot get the benefit under the reversionary declaratory decree. Whatever the customs earlier existing, if any, stands abrogated in view of the mandate of Section 4 and Section 30 of the Act, 1956 which is applicable to all and no customary law overrides the Hindu Succession Law.

11. Per contra, Ms. S. Janani, learned counsel for the respondents, while supporting the findings recorded by the first appellate Court and confirmed by the High Court in appeal submits that the subject land in dispute was mutated in the name of Smt. Banti on the basis of the oral gift and the suit which was filed by the respondents for mutation would not bind their reversionary rights on the suit land and that has been held by all the courts that the alleged oral gift has not been proved and being the concurrent finding of fact, needs no further indulgence. Learned counsel further submits that if the respondents cannot rely upon the said decree to seek possession of the land yet the findings in the suit proceedings would bind the parties. It was never the case of the appellant that the suit land was given to her mother Banti in lieu of the maintenance. On the contrary, it was pleaded that such land was given to her in lieu of service rendered and the subject land which was given to her mother Banti in lieu of maintenance has been specifically mentioned in the will dated 5 th January, 1973 of late Bhana. In the aforesaid will, late Bhana(testator) also mentioned that Smt. Banti was living in adultery and separate from him for more than 20 years and merely being in possession of the suit land will not make her an absolute owner of the property on coming in effect of the Act, 1956 and bare reading of Section 14(1) makes it clear that in order to avail the benefit of the mandate of law, the women must come in possession of the land under one of the devise mentioned therein.

12. Learned counsel further submits that in the earlier proceedings, the appellant had conceded that the will dated 5 th January, 1973 was validly executed and in RSA No. 933/1984, the validity of the will dated 5th January, 1973 has been upheld and the present appellant preferred appeal by special leave against the said judgment which came to be dismissed as withdrawn by this Court vide order dated 7th April, 2006 and the finding was recorded that will dated 21st February, 1973 has not been legally executed and proved. In the given circumstances, the appellant has no legitimate right to claim possession by way of succession under the Act, 1956 and no error was committed in restoration of reversionary rights of the respondents under the impugned judgment.

13. The concurrent finding of fact has been recorded by the High Court in the regular second appeal in separate proceedings initiated in reference to will dated 5th January, 1973 in RSA No. 933/1984

decided on 28th July, 2004 held to be validly executed and based on the recital of the will, it was held that the plaintiffs became entitled to succeed to the entire property of Bhana (deceased) including the land in dispute to the exclusion of defendant(appellant herein). It may be relevant to note that the finding of fact recorded under the impugned judgment in reference to a later will dated 21st February, 1973 on which much emphasis was laid by the present appellant, it was observed that the propounder of the will was legally required not only to prove the due execution of the will but also to dispel all suspicious circumstances which may have existed in its due execution of the aforesaid will and it was observed that the later will dated 21 st February, 1973 claimed by the present appellant cannot be taken to be duly proved and being a finding of fact duly supported by the material on record, we find no perversity or manifest error in the finding to be reviewed by this Court in the instant appeal.

14. It is a settled position of law that the mutation of a property in the revenue records are fiscal proceedings and does not create or extinguish title nor has it any presumptive value on title. It only enables the person in whose favour mutation has been ordered, to pay the land revenue. At the same time, the effect of a declaratory decree to restore the property alienated to the estate of the alienor and until and unless the alienees are able to convince the court that they have no subsisting interest in the property, the heirs of the alienees would be entitled to the benefits of the property as per the law of succession. The effect of the operation of the aforesaid declaratory decree would be to restore the land in dispute to the aforesaid estate of Bhana(deceased) and the succession would be deemed to have opened on 27th March, 1973 when Bhana died. On his death, the estate left behind him including the land in dispute would devolve upon his heirs as per their entitlement and after the registered will dated 5th January, 1973 has been upheld by the High Court in RSA No. 933/1984 decided on 28 th July, 2004 and attained finality, its consequence was to follow accordingly.

15. The submission of learned counsel for the appellant that the appellant being in possession of the subject property in question at the time when Act, 1956 came into force and by virtue of Section 14(1) of the Act became an absolute owner of the subject property and the decree being a nullity is inexecutable and it is a jurisdictional error against the policy of legislature, is without substance for the reason that Section 14(1) of the Act, 1956 clearly envisage that the possession of the widow, however, must be under some vestige of a claim, right or title or under any of the devise which has been purported under the law. Indisputedly, in the instant case, the appellant was not holding any valid possession over the subject property and as already observed, opening of fiscal proceedings would not confer a right of acquisition by either of the devise which has been referred to under the explanation to Section 14(1) of the Act, 1956. Section 14 of the Act, 1956 is as under:□"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."

16. The effect of Section 14, after the Act, 1956 came to be examined by a three Judge Bench of this Court in Eramma Vs. Veerupana and Others AIR 1996 SC 1879 as under:-"6. It was next contended by the appellant that she was admittedly in possession of half the properties of her husband Eran Gowda after he died in 1341-F and by virtue of Section 14 of the Hindu Succession Act she became the full owner of the properties and Respondents 1 and 2 cannot, therefore, proceed with the execution case. We are unable to accept this argument as correct. At the time of Eran Gowda's death the Hindu Women's Right to Property Act, 1937 (Act 18 of 1937) had not come into force. It is admitted by Mr. Sinha that the Act was extended to Hyderabad State with effect from February 7, 1953. It is manifest that at the time of promulgation of Hindu Succession Act, 1956 the appellant had no manner of title to properties of Eran Gowda. Section 14(1) of the Hindu Succession Act states:

> "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 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."
>
> 7. It is true that the appellant was in possession of Eran Gowda's properties but that fact alone is not sufficient to attract the operation of Section 14. The property possessed by a female Hindu, as contemplated in the section, is clearly property to which she has acquired some kind of title whether before or after the commencement of the Act. It may be noticed that the Explanation to Section 14(1) sets out the various modes of acquisition of the property by a female Hindu and indicates that the section applies only to property to which the female Hindu has acquired some kind of title, however restricted the nature of her interest may be. The words "as full owner thereof and not as a limited owner" as given in the last portion of sub-section (1) of Section 14 clearly suggest that the legislature intended that the limited ownership of a Hindu female should be changed into full ownership. In other words, Section 14(1) of the Act contemplates that a Hindu female who, in the 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. 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. The Explanation to sub-section (1) of Section 14 defines the word "property" as including "both movable and immovable property acquired by a female Hindu by inheritance or devise ...". Sub-section (2) of Section 14 also refers to acquisition of property.

It is true that the Explanation has not given any exhaustive connotation of the word "property" but the word "acquired" used in the Explanation and also in sub-section (2) of Section 14 clearly indicates that the object of the section is to make a Hindu female a full owner of the property which she has already acquired or which she acquires after the enforcement of the Act. It does not in any way confer a title on the female Hindu where she did not in fact possess any vestige of title. It follows, therefore, that the section cannot be interpreted so as to validate the illegal possession of female Hindu and it does not confer any title on a mere trespasser. In other words, the provision of Section 14(1) 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.

(emphasis supplied)

17. It was further considered by a three-Judge Bench of this Court in V. Tulasamma and Others Vs. Sesha Reddy(Dead) by LRs 1977(3) SCC 99 and interpretation of Section 14(1) and (2) of the Act, 1956 has been summarized as under:-

62. We would now like to summarise the legal conclusions which we have reached after an exhaustive considerations of the authorities mentioned above on the question of law involved in this appeal as to the interpretation of Sections 14(1) and (2) of the Act of 1956. These conclusions may be stated thus:

> "(1) The Hindu female's right to maintenance is not an empty formality or an illusory claim being conceded as a matter of grace and generosity, but is a tangible right against property which flows from the spiritual relationship between the husband and the wife and is recognised and enjoined by pure Shastric Hindu law and has been strongly stressed even by the earlier Hindu jurists starting from Yajnavalkya to Manu. Such a right may not be a right to property but it is a right against property and the husband has a personal obligation to maintain his wife and if he or the family has property, the female has the legal right to be maintained therefrom. If a charge is created for the maintenance of a female, the said right becomes a legally enforceable one. At any rate, even without a charge the claim for maintenance is doubtless a pre-existing right so that any transfer declaring or recognising such a right does not confer any new title but merely endorses or confirms the pre-existing rights.
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> (2) Section 14(1) and the Explanation thereto have been couched in the widest possible terms and must be liberally construed in favour of the females so as to advance the object of the 1956 Act and promote the socio-economic ends sought to

be achieved by this long needed legislation.

(3) Sub-section (2) of Section 14 is in the nature of a proviso and has a field of its own without interfering with the operation of Section 14(1) materially. The proviso should not be construed in a manner so as to destroy the effect of the main provision or the protection granted by Section 14(1) or in a way so as to become totally inconsistent with the main provision.

(4) Sub-section (2) of Section 14 applies to instruments, decrees, awards, gifts, etc. which create independent and new titles in favour of the females for the first time and has no application where the instrument concerned merely seeks to confirm, endorse, declare or recognise pre-existing rights. In such cases a restricted estate in favour of a female is legally permissible and Section 14(1) will not operate in this sphere. Where, however, an instrument merely declares or recognises a pre-existing right, such as a claim to maintenance or partition or share to which the female is entitled, the sub-section has absolutely no application and the female's limited interest would automatically be enlarged into an absolute one by force of Section 14(1) and the restrictions placed, if any, under the document would have to be ignored. Thus where a property is allotted or transferred to a female in lieu of maintenance or a share at partition, the instrument is taken out of the ambit of sub-section (2) and would be governed by Section 14(1) despite any restrictions placed on the powers of the transferee.

(5) The use of express terms like 'property acquired by a female Hindu at a partition', 'or in lieu of maintenance', 'or arrears of maintenance', etc. in the Explanation to Section 14(1) clearly makes sub-section (2) inapplicable to these categories which have been expressly excepted from the operation of sub-section (2).

(6) The words 'possessed by' used by the Legislature in Section 14(1) are of the widest possible amplitude and include the state of owning a property even though the owner is not in actual or physical possession of the same. Thus, where a widow gets a share in the property under a preliminary decree before or at the time when the 1956 Act had been passed but had not been given actual possession under a final decree, the property would be deemed to be possessed by her and by force of Section 14(1) she would get absolute interest in the property. It is equally well settled that the possession of the widow, however, must be under some vestige of a claim, right or title, because the section does not contemplate the possession of any rank trespasser without any right or title.

(7) That the words 'restricted estate' used in Section 14(2) are wider than limited interest as indicated in Section 14(1) and they include not only limited interest, but also any other kind of limitation that may be placed on the transferee." (emphasis supplied)

18. In Eramma Vs. Veerupana and Others (supra), the widow was in possession of the half of the property of her late husband and claimed her absolute ownership by virtue of Section 14 of the Act, 1956 which was negated by this Court for the reason that the widow was not holding possession over the subject property in question under any of the devise indicated in the explanation to Section 14(1) of the Act, 1956.

19. Wherein V. Tulasamma and Others Vs. Sesha Reddy(Dead) by LRs, it was an admitted case before the Court that the suit property came in possession of the widow under a compromise in execution of decree of the Court, restricting her right of alienation in recognition of right to maintenance, having pre□existing right over the subject property in question on the date the Act, 1956 came into force(i.e. 17th June, 1956). In that reference, the claim was considered by this Court and held that the pre□existing right of the widow on the date of the commencement of the Act, 1956 will get her the absolute rights over the subject property.

20. In the instant case, the appellant although was holding possession but not under any of the devise referred to under explanation to Section 14(1) of the Act, 1956 and mere possession would not confer pre□existing right of possession over the subject property to claim full ownership rights after the Act, 1956 came into force by operation of law and this what was considered and negated by the High Court in the impugned judgment.

21. Consequently, the appeal fails and is accordingly dismissed.

No costs.

22. Pending application(s), if any, stand disposed of.

……J. (A.M. KHANWILKAR) ……J. (AJAY RASTOGI) NEW DELHI April 04, 2019