Supreme Court of India
Gumpha vs Jaibai on 11 February, 1994
Equivalent citations: 1994 SCC (2) 511, JT 1994 (1) 535
Author: R Sahai
Bench: Sahai, R.M. (J)

PETITIONER:
GUMPHA

Vs.

RESPONDENT:
JAIBAI

DATE OF JUDGMENT11/02/1994

BENCH:
SAHAI, R.M. (J)
BENCH:
SAHAI, R.M. (J)
KULDIP SINGH (J)

CITATION:
1994 SCC (2) 511 JT 1994 (1) 535
1994 SCALE (1)578

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by SAHAI, J.- Does the life estate of a widow under a will executed in 1941 gets enlarged into an absolute estate under Section 14(1) of the Hindu Succession Act, 1956 (in brief 'the Act') if the succession opened after death of the testator in 1958 is the question of law that arises for consideration in this appeal directed against the judgment and order of the Bombay High Court (Nagpur Bench).

2.How the dispute arose may be narrated, in brief, to determine if the High Court committed any error of law in setting aside the concurrent orders passed by the two courts below dismissing the suit of the plaintiff respondent for declaration of title and recovery of possession. It has been found and is not disputed that the last male holder had two wives. He executed a will of his property in 1941 giving one-half share to each of his wives till their life and the respondent, the only daughter, was to be ultimate beneficiary. The testator died in 1958. The next to die in 1966 was one of his wives, the stepmother of the plaintiff. But, few months before her death, she had executed a will in favour of

the defendant-appellant, a complete stranger to the family, allegedly her domestic servant. It is the validity of this will, basically, which has been subject- matter of dispute. According to the respondent, the will was invalid as her mother having right of maintenance only, she had no right or title which she could validly transfer by way of will in favour of the appellant. On pleadings of parties various issues were framed. It is not necessary to narrate them as the finding on the nature of interest that the mother of the respondent had in the property, was recorded both by the trial court and First Appellate Court in her favour. It was held that her mother had life interest only. But the suit was dismissed as the life estate created under the will stood converted into absolute estate under Section 14(1) of the Act as it was in recognition of pre-existing right. The High Court did not agree with this and held that the widow could not get larger interest than that was intended by the testator. Thus execution of the will by the last male holder in 1941, grant of life interest to the two wives, vesting of property ultimately in the daughter, death of testator in 1958, his wife whose share is now in dispute in 1966 and bequeathing of the property by her in favour of the appellant few months before her death are facts which have been found to have been proved by all the courts. The difference arose between the High Court and the two courts below on applicability of the law only.

3.What, therefore, falls for consideration is if the testamentary disposition of property by a male Hindu by a will which comes into operation after 1956, creating life interest in favour of his widow, subsists as such after his death or she becomes an absolute owner by operation of sub- section (1) of Section 14 read with the explanation. In other words, what is the dichotomy between two sub-sections of Section 14 which forms the bedrock of revolutionary changes brought out in Hindu Law of Succession in 1956. The Act was one out of the series of legislations enacted in 1956 effecting far- reaching changes in the customary Hindu Law. It undid the social injustice to which the females were subjected for centuries by equating them with males in matters of inheritance, succession and disposition of property. The Act confers rights of inheritance and sweeps away the traditional limitations on powers of females on disposition of property etc. which were regarded under the Hindu Law as inherent in her estate. (S.S. Munna Lal v. S.S. Raj Kumar'.) They too became, 'a stock of descent' (Kalawatibai v. Soiryabai2.) A female Hindu who, except for stridhan property, was a limited owner became an absolute owner under Section 14 of the Act. The section not only removed the disability from which a female suffered in acquiring and holding property but it converted any estate held by her on the date of commencement of the Act from limited or restricted estate to an absolute estate or full ownership. (See S.S. Munna Lal v. S.S. Raj Kumar' and Bai Vajia v. Thakorbhai Chelabhai3.) In Thota Sesharathamma v. Thota Manikyamma4 it was observed that Section 14(1) was used 'as a tool to undo past injustice to elevate her to equal status with dignity of person on par with man'. In Kalawatibai2 it was observed that this, 'section was a step forward towards social amelioration of women who had been subjected to gross discrimination in matter of inheritance'.

4.Even though the Act purports to codify the law relating to intestate succession yet to become a complete code it purports to deal with testamentary succession as well. Section 30 which is the lone section in Chapter III dealing with testamentary succession codifies the law which had been judicially expounded. It has further effected far-reaching changes in customary law in this regard. It extends operation of the provision, now, even to coparcenary property and property dealt by customary law mentioned in the explanation appended to Section 30. The section reads as under :

> " 30. Testamentary succession.- Any Hindu may dispose of by will or other testamentary disposition any property, which is capable of being so disposed of by him, in accordance with the provisions of the Indian Succession Act, 1925, or any other law for the time being in force and applicable to Hindus.

Explanation.- The interest of a male Hindu in a Mitakshara coparcenary property or the interest of a member of a tarwad, tavazhi, illom, kutumba or kavaru in the. property of the tarwad, tavazhi, illom, kutumba or kavaru shall, notwithstanding anything contained in this Act, or any other law for the time being in force, be deemed to be property 1 1962 Supp 3 SCR 418: AIR 1962 SC 1493 2 (1991) 3 SCC 410 3 (1979) 3 SCC 300 4 (1991) 4 SCC 312 capable of being disposed of by him or by her within the meaning of this section."

5.It may not be out of place to mention at this stage how the law on testamentary disposition by a Hindu had been settled by the decisions rendered by the Privy Council. In Sreemutty Soorjee money Dossey v. Denobundoo Mullick5 it was held:

> "Whatever may have formerly been considered the state of that law as to the testamentary power of Hindoos over their property, that power has now long been recognised, and must be considered as completely established."

It was reiterated in Baboo Beer Pertab Sahee v. Maharajah Rajender Pertab Sahee6 and it was observed :

> "It is too late to contend that, because the ancient Hindoo Treatises make no mention of wills, a Hindoo cannot make a testamentary disposition of his property. Decided cases, too numerous to be now questioned, have determined that the testamentary power exists, and may be exercised, at least within the limits which the law prescribes for alienation, by gift inter vivos."

The right and power of a Hindu to create limited estate or restricted estate and its extent was recognised in Jatindra Mohan Tagore v. Ganendra Mohan Tagore7. It was observed:

> "[T]he law of wills among Hindus is analogous to the law of gifts; and even if wills are not universally to be regarded in all respects as gifts to take effect upon death, they are generally so to be regarded as to the property which they can transfer and the persons to whom it can be transferred. ... There is no reason why a Hindu should not, by will, create an estate for life."

6.The wide and large power of a Hindu to bequeath a property to anyone as it existed before the Act came into force and determine the nature of an estate that could be created by him has, thus, now been statutorily recognised. The language is clear and explicit. It creates absolute power in a Hindu to dispose of his property by will. The section does not impose any restriction, express or implied, except that he should be capable of disposing of such property. The use of expansive language made wider by explanation leaves no room for doubt that the legislature unmistakably intended that any

property disposed of by will by a Hindu who is capable of disposing of such property shall be subject to restrictions and conditions imposed by the testator himself in the will.

7.Law being thus and power of a Hindu to dispose of his property being absolute including the right to create limited or restricted estate in favour of a female the question is, does she take a life interest or she becomes an 5 (1862) 1 Moore's IA 123: 1 Suth 291 6 (1867) 12 Moore's IA 1, 37: 9 WR 15 7 (1872) 9 Beng LR 377 absolute owner by virtue of operation of Section 14 of the Act in respect of property which comes into her possession on death of the testator after 1956? Will under Indian Succession Act, which applies to Hindu Succession Act, as well, operates from the date of death of testator since on the date the last male holder died the Act applied the testamentary disposition made by him was governed by Chapter III of the Act. To this extent there can be no dispute. But when he died and the property came into possession of his widow the question is what right she got absolute under Section 14(1) or limited under the will by operation of Section 14(2) of the Act. The purpose and objective of Section 14 has been explained earlier. Its reach, too, is very wide. In V. Tulasamma v. Shesha Reddy8 it was held that the explanation appended to the section enlarges its ambit further by expanding the meaning of word 'property' to include both moveable and immoveable properties acquired by a female Hindu in any of the manner mentioned therein. Thus any property possessed by a female Hindu if it is covered in sub-section (1), then by operation of law she becomes absolute owner of it. The meaning of the words 'possessed' and 'any property' was explained to have been used in wide and broad sense as including whatever the 'kind of property' and possessed either actually or constructively or in 'any form recognized by law'. The wide and extensive meaning to 'advance social purpose of legislation' was recognised as far back as 1962 in S.S. Munna Lal case' was reiterated in Mangal Singh v. Shrimati Rattno9 reaffirmed in Seth Badri Prasad v. Kanso Devi10 advanced further in Tulasamma case8 and has not been deviated since then. Fazal Ali, J. in Tulasamma8 deduced following principles in this regard : (SCC pp. 120-21, para 3 1) "In the light of the above decisions of this Court the following principles appear to be clear-

(1)that the provisions of Section 14 of the 1956 Act must be liberally construed in order to advance the object of the Act which is to enlarge the limited interest possessed by a Hindu widow which was in consonance with the changing temper of the times;

(2)it is manifestly clear that sub-section (2) of Section 14 does not refer to any transfer which merely recognises a pre-

existing right without creating or conferring a new title on the widow. This was clearly held by this Court in Badri Prasad case10; (3)that the Act of 1956 has made revolutionary and far-reaching changes in the Hindu society and every attempt should be made to carry out the spirit of the Act which has undoubtedly supplied a long-felt need and tried to do away with the invidious distinction between a Hindu male and female in matters of intestate succession;

8 (1977) 3 SCC 99 9 (1967) 3 SCR 454: AIR 1967 SC 1786 10 (1969) 2 SCC 586: AIR 1970 SC 1963 (4)that sub-section (2) of Section 14 is merely a proviso to subsection (1) of Section 14 and has to be interpreted as a proviso and not in a manner so as to destroy the effect of the main provision."

8.Out of these, the two principles which need be explained are two and four as it is erroneous understanding about the concept of pre-existing right which led the two courts below in dismissing suit, and furnished foundation of vehement submission advanced in this Court. Why was the concept of pre-existing right evolved? How far it applies? To appreciate, brief facts of that case are necessary to be mentioned. Tulasamma was a widow. She filed a claim for maintenance as her husband had died as a member of the Joint Hindu Family. It ended ultimately by way of compromise. The property was given to her for maintenance with limited interest that she would not have any power of alienation. And the property was to revert back. A decree was passed accordingly. Since the property was given to Tulasamma in lieu of her right to maintenance, she acquired it as provided by the explanation appended to sub-section (1) of Section 14. But this right she got under a decree of a court which prescribed a restricted estate. Therefore, the right and interest which she got fell under sub-section (2) of Section 14 as well. It obviously created an anomaly. It was, therefore, observed by Bhagwati, J.: (SCC pp. 137-38, para 67) "It is indeed unfortunate that though it became evident as far back as 1967 that sub-

sections (1) and (2) of Section 14 were presenting serious difficulties of construction in cases where property was received by a Hindu female in lieu of maintenance and the instrument granting such property prescribed a restricted estate for her in the property and divergence of judicial opinion was creating a situation which might well be described as chaotic, robbing the law of that modicum of certainty which it must always possess in order to guide the affairs of men, the legislature, for all these years, did not care to step in to remove the constructional dilemma facing the courts and adopted an attitude of indifference and inaction, untroubled and unmoved by the large number of cases on this point encumbering the files of different courts in the country, when by the simple expedient of an amendment, it could have silenced judicial conflict and put an end to needless litigation. This is a classic instance of a statutory provision which, by reason of its inapt draftsmanship, has created endless confusion for litigants and proved a paradise for lawyers."

9.The Court by interpretative process, thus, removed the anomaly arising out of 'inapt drafting' by construing sub- section (1) widely and reading sub-section (2) as a proviso. But this wide meaning has to be so read is to be in conformity with Section 30 and sub-section (2) of Section

14. Tulasamma case8 was concerned with the right of maintenance granted to a widow in a decree. It became necessary, therefore, to evolve the principle of re-existing right. That is if the maintenance was given in recognition of preexisting right then such acquisition of property was taken out of sub-section (2)to promote the objective of Section 14. But if that concept is extended to a will executed under Section 30 it would militate against express provision in Section 30 and sub-section (2) of Section 14. The right of maintenance explained in Tulasamma8 and reiterated in Bai Vajia case3 was the one recognised under customary Hindu Law to maintain a widow, daughter-inlaw, a mother as a member of the joint family property. It would not operate where a Hindu is bequeathing his property in exercise of his right under Section 30 of the Act. In G. Appaswami Chettiar v. R. Sarangapani Chettiarl , it was held by this Court that where a female got a life estate under a will executed by her father, she was not entitled to claim absolute rights under Section 14(1) and her claim was covered by Section 14(2). In Kothi Satyanarayana v. Galla Sithayya12 a life estate created under a Deed of Settlement was held to be an instrument contemplated under sub-section (2) and,

therefore, a female Hindu was held not to have acquired better right than what was given to her under the instrument. That the legislature was aware of the unrestricted power of a Hindu to dispose of his property in any manner he considered proper subject to such restrictions as were operating in different schools is clear from sub- section (2) of Section 14. It does not curtail or erode the absolute estate which comes into operation by law but excludes from it specifically the property acquired in the manner mentioned therein. That is if any property is acquired by a female Hindu as provided in sub-section (2) then it would be beyond the purview of sub-section (1). Reason for it was that the legislature never intended to confer larger estate on females than on males. If a Hindu could bequeath his property of which he was capable of and could create life interest or restricted estate for a male it would have been incongruous to create an absolute estate in favour of female. Sub-section (2) of Section 14 was read as proviso or exception to sub-section (1) so that it may impinge as little as possible on the broad sweep of the ameliorative provision contained in sub-section (1). In Tulasamma8 it was observed that, 'it cannot be construed in a manner which would rob sub-section of its efficacy and deprive a Hindu female of the protection sought to be given to her by sub-section (1)'. True it is an exception to sub- section (1) and should be read in such a manner as not to rob sub-section (1), 'of that modicum of certainty which it must always possess'. Yet the field of operation of the two sub-sections is independent and separate. The legislature while obliterating the dark side of Hindu Law could not have intended to encroach upon right which existed under customary law and which it widened by adding explanation to Section 30.

10.Reliance was placed on Thota Sesharathamma v. Thota Manikyamma4 and it was urged that in this case the right created in favour of a female under a will was held to have become absolute under sub-section (1). It is not necessary to examine this decision as it was a case in which the testator died before the Hindu Succession Act came into force and the widow 11 (1978) 3 SCC55:AIR 1978 SC 1051 12 (1986) 4 SCC 760: AIR 1987 SC 353 was in possession as limited owner and her rights matured into absolute by operation of law. Nor it is necessary to consider if the ratio in Karmi v. Amru13 was rightly observed to be of doubtful authority by the Bench in Thota Sesharathama4 since the succession in present case opened after 1956.

11.Acquisition of property under a will is not mentioned under subsection (1). It squarely falls under sub-section (2). Would it make any difference if the testator after coming into force of the Act creates a restricted estate and provides for maintenance under the will? Can it be said to fall under any of the clauses mentioned in the explanation appended to subsection (1).

12. Section 14 reads 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 stridhan 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."

The explanation widens the ambit of sub-section (1) and extends it to any acquisition mentioned in it and by the first part the operation of sub-section (1) is extended to both moveable and immoveable properties. The second part then enumerates the manner of acquisition. It includes inheritance and device; partition; in lieu of maintenance or arrears of maintenance; gift from any whether relation or not before, at or after her marriage; by her own skill or exertion; by purchase; by prescription; in any manner whatsoever; property held by her as stridhan immediately before the commencement of this Act. It does not include acquisition by will. That is in conformity with Section 30 of the Act. Otherwise it would have given rise to conflict between the property disposed of by a Hindu by a will creating limited interest and the acquisition of interest by a female under Section 14(1). None of these acquisitions are capable of creating any difficulty. But the acquisition in lieu of maintenance or arrears of maintenance and in any manner whatsoever needs elucidation. Use of words 'in lieu of' or 'arrears of' appear to be significant. The legislature as explained earlier was aware of absolute power 13 (1972) 4 SCC 86 of a Hindu to bequeath his property. But this right did not exist in joint family property or in various other properties under customary law. That has now been specifically recognised by Section 30. A Hindu can bequeath his interest even in joint Hindu property. But what is its effect on the right of his widow if the testator gives only right of maintenance. Can it be said to be in lieu of maintenance? The answer is simple. The legislature then would have used the words, 'for maintenance' and not instead of 'or in lieu of maintenance'. That could not have been the purpose. Under the Act, a female unlike customary law is an heir. She inherits the property in her own right. The expression 'in lieu of maintenance' or 'arrears of maintenance' would thus become inapplicable. Apart from it a right of maintenance under a will after 1956 would fall under sub-section (2) as even on ratio in Tulasamma8 it would be creation of right for the first time and not in recognition of preexisting right. Even the expression in any manner whatsoever cannot be of any help for deciding the right and interest of a female Hindu acquired under a will. The expression is no doubt very wide but its width cannot be extended to those acquisitions which are specifically dealt with by subsection (2). Its operation has to be confined to such an acquisition which is not covered by sub-section (2) or any of the clauses of the explanation. It is true that the explanation is not exhaustive as is clear from the use of the word 'includes' but its ambit cannot be stretched so as to nullify the effect of sub-section (2). A reading of the two sub-sections together indicates that even though the law was revolutionized and a female Hindu was made an absolute owner in respect of any property acquired by her either before or after the date of enforcement of the Act yet the law did not intend to confer a higher and better right than what was enjoyed by a male Hindu. In Tulasamma case8 it was held by this Court that a female Hindu could acquire rights under Section 14(1) only if she was possessed of the property and that possession was by some legal authority. To put it differently a trespasser or a female Hindu who cannot establish any right in the property of which she was possessed could not acquire any right.

(Eramma v. Verrupanna14; Kuldip Singh v. Surain Singh15 and Dindayal v. Rajaraml6). It necessarily follows that the possession must be founded on some basis which may be acceptable in law and the right that she acquires under Section 14 depends on the nature of possession she enjoyed over the property. Consequently if a female Hindu acquires possession after the enforcement of the Succession Act and that possession was traceable to an instrument or a document described in sub- section (2) then she could not get higher right than what is stipulated in the document itself. The purpose and the legislative intention which surfaces from a combined reading of the two sub-sections is that it attempts to remove the disability which was imposed by the customary Hindu Law on acquisition of rights by a female Hindu but it does not enlarge 14 (1966) 2 SCR 626: AIR 1966 SC 1879 15 (1968) 1 Andh LT 224: 1968 Punj LR 30: 1968 SCD 881 16 (1970) 1 SCC 786: AIR 1970 SC 1019 or enhance the right which she gets under a will giving her a limited estate under Section 30 of the Act.

13. For these reasons, the appeal fails and is dismissed. But there shall be no order as to costs.