Supreme Court of India
Gummalapura Taggina ... vs Setra Veeravva And Others on 19 December, 1958
Equivalent citations: 1959 AIR 577, 1959 SCR Supl. (1) 968
Author: S J Imam
Bench: Imam, Syed Jaffer

PETITIONER:
GUMMALAPURA TAGGINA MATADAKOTTURUSWAMI

Vs.

RESPONDENT:
SETRA VEERAVVA AND OTHERS

DATE OF JUDGMENT:
19/12/1958

BENCH:
IMAM, SYED JAFFER
BENCH:
IMAM, SYED JAFFER
DAS, S.K.
KAPUR, J.L.

CITATION:
1959 AIR 577 1959 SCR Supl. (1) 968
CITATOR INFO :

R	1962 SC1493	(15)
R	1966 SC 216	(2)
E	1967 SC1786	(9,16)
R	1970 SC1963	(6)
R	1977 SC 164	(8)
RF	1977 SC1944	(3)
E&D	1987 SC1493	(7)
RF	1991 SC 663	(3,15)
D	1991 SC1581	(8,11)

ACT:
Hindu Law-Widow in Possession of husband's property-Adopted son getting into possession-Adoption invalid-Whether widow is in constructive Possession-"Property Possessed by a female Hindu ", Meaning of-Hindu Succession Act, 1956 (30 of 1956), s. 14.

HEADNOTE:
Sub-section (1) of s. 14 Of the Hindu Succession Act, 1956, provided: " 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."

A suit instituted by the nearest reversioner of K for a declaration that the adoption made by K's widow was invalid, was dismissed -and during the pendency of the appeal filed against the decree dismissing the suit, the Hindu Succession Act, 1956, came into force. At the hearing of the appeal the respondent raised the preliminary objection that even if the adoption were held to be invalid, the appellant's suit must fail in view of the provisions of S. 14 Of the Act under which K's widow, who was a party to the suit and the appeal, would be entitled to a full ownership of her husband's properties, while it was urged for the appellant that s. 14 Of the Act did not apply to the facts of the case because the properties were not in, the possession of K's widow, but were only with the adopted son at the time the Act came into force.

Held, that the word "possession" in s. 14 Of the Hindu Succession Act, 1956, is used in the widest connotation and it may be either actual or constructive or in any form recognised by law.

969

Gostha Behari v. Haridas Samanta, A.I.R. 1957 Cal. 557, approved.

In the present case, if the adoption was invalid K's widow would be the full owner of K's estate, and even if it be assumed that the adopted son was in actual possession of the estate, his possession was merely permissive and K's widow must be regarded as being in constructive possession of it through him. Accordingly, s. 14 was applicable and as K's widow became a full owner of her husband's estate, the appellant's suit was not maintainable.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 120 of 1955. Appeal from the judgment and decree dated March 25, 1949, of the Madras High Court in Appeal No. 55 of 1946, arising out of the judgment and decree dated November 26, 1945, of the Court of the District Judge of Bellary in Original Suit No. 39 of 1943.

A. V. Viswanatha Sastri and K. R. Chaudhury for B. K. B. Naidu, for the appellant.

K.N. Rajagopala Sastri and M. S. K. Sastri, for the respondents.

1958. December 19. The Judgment of the Court was delivered by IMAM, J.-This appeal is before us on a certificate granted by the High Court as according to that Court a substantial question of law arose in the case which was stated by it to be " Is the adoption of the second defendant invalid, as the approval or consent of the five trustees mentioned in paragraph 14 of the will of Kari Veerappa, Exbt. P-2(a) was not obtained; and is the authority to adopt at an end if any one of those five persons did not accept the trusteeship or died before the adoption or refused to give their approval ".

In view of certain matters about to be stated, the question of law as propounded by the High Court does not require to be considered.

Kari Veerappa was the last male owner of the estate mentioned in his will, Exbt. P-2(a), which he executed on October 10, 1920. Under this will he authorised his wife Setra Veeravva, first defendant, to adopt a son for the purpose of continuation of his family as he had no issue. The authority to adopt was in the following terms:

" I have given her permission to adopt as many times as would be necessary, should the previous adoption be unsuccessful. But Veeravva must adopt only a boy approved by the respectable persons appointed by me in paragraph 14; should Veeravva die before -making any adoption, the persons becoming trustees should arrange for the adoption of a boy for the continuation of my family in accordance with my kulachara (family usage) At this stage it is unnecessary to refer to the other provisions of the will of Kari Veerappa. This gentle. man died on October 23, 1920. After his death, his widow made two attempts to adopt a son in accordance with his will. The first attempt was in 1939 which did not accomplish the purpose of the will as the person alleged to have been adopted died. The validity of this adoption was being questioned, but as the boy said to have been adopted had died, effects to dispute the adoption did not materialise. Veeravva thereafter, on October 11, 1942, adopted second defendant, Sesalvada Kotra Basayya. Two documents in this connection are on the record. The first document is Exbt. D-25 dated the 18th of September, 1942, which was a registered agreement to adopt the second defendant. The second document is also a registered document, which is described as the deed of adoption and is dated June 23, 1943. This clearly states that on October 11, 1942, Veeravva had adopted the 2nd defendant. Reference was also made in this document to the agreement of September 18, 1942. The appellant claiming to be the nearest reversioner of Kari Veerappa filed the present suit asking for a declaration that the adoption of the second defendant by Veeravva was invalid and not binding on the appellant or the other reversioners to the estate of the late Kari Veerappa. The suit filed by the appellant was heard by the District Judge of Bellary who dismissed it. The appellant- appealed to the High Court of Madras. His appeal was dismissed and the decision of the District Judge was substantially affirmed. The High Court did not allow compensatory costs granted by the District Judge, nor did it agree with his finding that the appellant had failed to prove the relationship he had propounded and that lie was

-not a reversioner at all, far less the nearest reversioner. In the opinion of the High Court, the appellant was a relative and a reversioner, though he had not proved that he was the nearest reversioner alive at the time the appeal was heard and that he need not prove this until he actually sought to recover possession of the property after Veeravva's death.

When this appeal came on for hearing the learned Advocate for the respondents took a preliminary objection that the suit filed by the plaintiff must in any event fail, having regard to the provisions of s. 14 of the Hindu Succession Act, 1956 (30 of 1956), hereinafter referred to as the Act. Hence the present appeal arising out of that suit must also fail. It was contended on behalf of the respondents that either there was a valid adoption or there was not. If there was a valid adoption and the decisions of the High Court and the District Judge on this question were correct, then obviously the suit of the appellant must be dismissed. If, on the other hand, it was found that the adoption of the

second defendant by Veeravva was either invalid or, in fact, had not taken place, then under the provisions of s. 14 of the Act, Veeravva became the full owner of her husband's estate and was not a limited owner thereof. Consequently, the appellant's suit was not maintainable. In, view of this submission we are of the opinion that the point raised by way of preliminary objection must first be considered and decided. It is well settled that an appellate court is entitled to take into consideration any change in the law (vide the case of Lachmeshwar Prasad Shukul v. Keshwar Lal Chaudhuri(1).

Section 14 of the 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.

(1) [1940] F.C.R. 84.

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."

On behalf of the appellant it was urged that s. 14 of the Act did not apply to the facts of the present case because the estate of Veerappa was not in possession of his widow Veeravva but was in possession of the second defendant at the time the Act came into force and, secondly, because under sub-s. (2) of s. 14 Veeravva got a restricted estate under the will Exbt. P-2(a) and the agreement to adopt, Exbt. D-25. It was submitted that the widow , s power of adoption did not depend on her ownership of the estate of her husband. That power in the present case was derived under the Hindu law either from the authority conferred by her husband or the consent of his agnates. The Act did not enlarge her power of adoption and did not render an invalid adoption made by her immune from attack by the reversioners during her life time. The act of Veeravva in the present case was to bring in a stranger. The appellant as a rever- sioner was, therefore, entitled during the life time of Veeravva to bring the present suit to obtain a declaration that the adoption of the second defendant was invalid. The question raised by the preliminary objection taken by the respondents must be considered an the assumption that the adoption of the second defendant was invalid. The provisions of a. 14 of the Act would not arise for consideration, if the second defendant had been validly adopted. It is necessary, therefore, to determine whether the provisions of s. 14 apply to the facts of the present case.

It was strongly urged on behalf of the appellant that the words " any property possessed by a female Hindu " in s. 14 of the Act referred to actual possession of the property whether the property was acquired before or after the Act came into force. This was a condition precedent to the applicability of the provisions of s. 14 to the present case. Since the Act came into force on June 17, 1956, and the decision of the High Court was given on March 25, 1955, the question as to who was in actual possession of the estate of Veerappa did not arise for consideration on the case of the appellant set out in his plaint. The appellant should accordingly be given an opportunity to have a finding recorded on this question after the taking of evidence in that respect. On behalf of the respondents it was urged that the words " any property possessed by a female Hindu " did not refer merely to actual physical possession only but to ownership and possession in law as well. It was further urged on behalf of the respondents that even if it be assumed that the words " possessed by a female Hindu " mean actual possession then, in the present case, it had been proved that Veeravva was in actual possession of the estate of Veerappa when the Act came into force. It could not be disputed that on the death of Veerappa, Veeravva came into possession of his estate and that she remained in possession at least until 1942 when the adoption of the second defendant is said to have taken place. But even on the adoption of the second defendant, the agreement to adopt dated September 18, 1942, stated that Veeravva was to remain in possession of her husband's estate during her life time in spite of the adoption. In the written statement filed by Veeravva and the second defendant it was clearly stated in para. 6 thereof that Veeravva came into possession of her husband's property and that she recovered possession of the property covered by the decree in 0. S. 20 of 1921 on the file of the Subordinate Judge's Court, Bellary, and that she had been in sole possession of the said property up-to- date and that although she had adopted the second defendant on October 11, 1942, it was subject to retention of the enjoyment, possession and management by her of her husband's property during her life time. An affidavit had been filed in this Court by the second defendant in which he has clearly admitted that Veeravva is still in possession of his adoptive father's estate in pursuance of the agreement of September 18, 1942. This was an admission against his own interest by the second defendant which he was not likely to make unless it was a fact that Veeravva was in possession of the estate since her husband's death up to the present. In answer to the affidavit of the second defendant and Veeravva that she was in actual possession, the appellant had failed to file an affidavit with any clear assertion that to his knowledge Veeravva was not in Possession. The affidavit filed by the appellant was in the nature of submissions made to the Court rather than an affidavit in which facts to his knowledge were asserted. In para. 2 he had made the significant statement " I understand that the possession of the suit properties has been and is now, in truth and in fact, with the alleged adopted son, the second petitioner. He is in possession of these properties and is dealing with them." He did not disclose bow he came to under. stand this. He certainly did not assert that all that was stated in para. 2 was to his knowledge. As an alternative, the appellant in para. 4 of his affidavit had submitted ,If I succeed in proving that the adoption is not true and valid, the petitioners cannot turn round and say that the possession of the first petitioner is that of a widow of an intestate and invoke the provisions of s. 14 of the Succession Act." He had further submitted in this paragraph that, even on the case of the respondents set out in their petition for adding additional grounds, Veeravva's estate was divested by the adoption, and as- she came into possession by reason of the ante-adoption agreement Exbt. D-25, s. 14 of the Act was not applicable. It seems to us that if it were permissible to decide the question of Veeravva's possession on only the affidavits before us, we would find no difficulty in holding that she was in possession of her

husband's estate when the Act came into force. It is to be remembered, however, that this question has arisen now and the appellant has had no real opportunity to establish his assertion that the second defendant is in actual possession and not Veeravva. It is necessary therefore to consider the true scope and effect of the provisions of sub-s. (1) of a. 14 of the Act. If the words " possessed by a female Hindu " occurring therein refer only to actual physical possession, it may be necessary to call for a finding on the question of such possession; if, on the contrary, these words have a wide connotation and include constructive possession or possession in law, the preliminary objection can be determined on the footing that Veeravva was in such possession at the relevant time. The provisions of s. 14 of the Act have been the subject of scrutiny and interpretation by various High Courts. In the case of Rama Ayodhya Missir v. Raghunath Missir (1) and in the case of Mt. Janki Kuer v. Chhathu Prasad (2) the Patna High Court took the view that the effect of ss. 14 and 15 of the Act was that a reversioner recognised as such under the Hindu law was no more a reversioner, as a female Hindu possessing any property, whether acquired before or after the commencement of the Act, held not a limited estate but an absolute estate therein, and after the coming into force of the Act, he had no right of reversion or any kind Of Spes successionsis. The High Courts of Calcutta, Andhra Pradesh and Madhya Pradesh have taken a view which does not support the view expressed by the Patna High Court in the aforesaid cases, The High Court of 'Madhya Pradesh in the case of Mt. Lukai v. Niranjan (3) dissented from the decisions of the Patna High Court in the above-mentioned cases.' Indeed, the Patna High Court in the case of (1)A.I.R. 1957 Pat. 480. (2) A.I.R. 1957 Pat. 674.

(3) A.I.R. 1058 Madh. Pra. 160.

Harak Singh v. KailaSh Singh (1) overruled its previous decisions referred to above, and rightly pointed out that the object of the Act was to improve the legal status of Hindu women, enlarging their limited interest in property inherited or held by them to an absolute interest, provided they were in possession of the property when the Act came into force and, therefore, in a position to take advantage of its beneficial provisions; but the Act was not intended to benefit alienees who with their eyes open purchased the property from the limited owners without justifying necessity before the Act came into force and at a time when the vendors had only a limited interest of Hindu women. In the case before us, the essential question for con- sideration is as to how the words "any property possessed by a female Hindu, whether aquired before or after the commencement of this Act " in a. 14 of the Act should be interpreted. Section 14 refers to property which was either acquired before or after the commencement of the Act and that such property should be possessed by a female Hindu. Reference to property acquired before the commencement of the Act certainly makes the provisions of the section re- trospective, but even in such a case the property must be possessed by a female Hindu at the time the Act came into force in order to make the provisions of the section applicable. There is no question in the present case that Veeravva acquired the property of her deceased husband before the commencement of the Act. In order that the provisions of s. 14 may apply to the present case it will have to be further established that the property was possessed by her at the time the Act came into force. It was the case of the appellant that the estate of Veerappa was in actual possession of the second defendant and not Veeravva at the relevant time. On behalf of the respondent it was urged that the words " possessed by " had a wider meaning than actual physical possession, although physical possession may be included in the expression. (1) A.I.R. 1958 Pat. 581.

In the case of Gaddam Venkayamma v. Gaddam Veerayya (1) Viswanatha Sastri, J., with whom Satyanarayana Raju, J., agreed, expressed the opinion that "the word ' possessed' in s. 14 refers to possession on the date when the Act came into force. course, possession referred to in s. 14 need not be actual physical possession or personal occupation of the property by the Hindu female-but may be possession in law. The possession of a licensee, lessee or a mortgagee from the female owner or the possession of a guardian or a trustee or an agent of the female owner would be her possession for the purpose of s. 14. The word " possessed " is used in s. 14 in a broad sense and in the context possession means the state of owning or having in one's hands or power. it includes possession by receipt of rents and profits. " The learned Judges expressed the view that even if a trespasser were in possession of the land belonging to a female owner, it might conceivably be regarded as being in possession of the female owner, provided the trespasser had not perfected his title. We do not think that it is necessary in the present case to go to the extent to which the learned Judges went. It is sufficient to say that possessed " in s. 14 is used in a broad sense and in the context means the state of owning or having in one's hand or power. In the case of Gostha Behari v. Haridas Samanta (2), P. N. Mookherjee, J., expressed his opinion as to the meaning of the words " any property possessed by a female Hindu " in the following words:-

"The opening words in " property possessed by a female Hindu obviously mean that to come within the purview of the section the property must be in possession of the female concerned at the date of the commencement of the Act. They clearly contemplate the female's possession when the Act came into force. That possession might have been either actual or constructive or in any form recognised by law, but unless the female Hindu, whose limited estate in the disputed property is claimed to have been transformed into (1) A.I.R. 1957 Andh. Pra. 280.

(2) A.I.R. 1957 Cal. 557, 559.

absolute estate under this particular section, was at least in such possession, taking the word " possession " in its widest connotation, when the Act came into force, the section would not apply-".

In our opinion, the view expressed above is the correct view as to how the words " any property possessed by a female Hindu " should be interpreted. In the present case if the adoption was invalid, the full owner of Veerappa's estate was his widow Veeravva and even if it be assumed that the second defendant was in actual possession of the estate his possession was merely permissive and Veeravva must be regarded as being in constructive possession of it through the second defendant. In this situation, at the time when the Act came into force, the property of Veerappa must be regarded in law as being possessed by Veeravva. It was suggested that according to the will of Veerappa, Exbt. P_2(a), in the properties mentioned in para. 1-of that will, Veeravva got only a restricted estate. The provisions of para. 4 of the will, however, make it clear that they would come into force only if the trustees mentioned in the will and Veeravva should disagree. No material was shown to us that, in fact, the trustees and Veeravva had disagreed and that the provisions of para. 4 were given effect to. Paragraph 12 of the will also showed that if the adoption was invalid, the property devolved on Veeravva as in intestacy. It is clear, therefore, that the provisions of para. 4 are of no assistance to the appellant in applying the provisions of sub-s. (2) of s. 14 of the Act. Reference was also made to the contents of the agreement, Exbt. D - 25, dated September 18, 1942, in this

connection. It is clear.' however, that by this agreement no estate was conferred on Veeravva and she did not thereby acquire any estate, much less a restricted estate. All that this document stated was that there was an agreement between the guardians of the boy to be adopted and Veeravva that even if the boy is adopted, Veeravva would remain in possession and enjoyment of her husband's estate during her life time. In our opinion, there is no material on the record by which it can reasonably be said that the provisions of sub-s. (2) of s. 14 of the Act applied to the present case.

It was urged that the act of Veeravva in adopting the second defendant was to bring in a stranger and this action of hers could be questioned by a reversioner, as any alienation made by her, during her life time. Reference was made to s. 42 of the Specific Relief Act, Illustration (f). In our opinion, this is of no avail to the appellant, because Illustration (f) obviously refers to a Hindu widow's estate and has no reference to a full owner. The right of a reversioner as one of the heirs under s. 42, Specific Relief Act, is limited to the question of preserving the estate of a limited owner for the benefit of the entire body of reversioners; but as against a full owner, the reversioner has no such right. In our opinion, under the Act Veeravva becoming a full owner of her husband's estate, the suit could not succeed and the appeal must accordingly fail. In our opinion, the appellant's suit was not maintainable, having regard to the provisions of s. 14 of the Act, even if it be assumed that there was no valid adoption of the second defendant. The appeal accordingly fails and is dismissed with costs.

Appeal dismissed.