Supreme Court of India
Raghubar Singh & Ors vs Gulab Singh & Ors on 14 July, 1998
Author: J Dr. Anand
Bench: A.S. Anand, V.N. Khare

PETITIONER:
RAGHUBAR SINGH & ORS.

Vs.

RESPONDENT:
GULAB SINGH & ORS.

DATE OF JUDGMENT: 14/07/1998

BENCH:
A.S. ANAND, V.N. KHARE

ACT:

HEADNOTE:

JUDGMENT:

THE 14TH DAY OF JULY, 1998 Present:

Hon'ble Dr. Justice A.S. Anand Hon'ble Mr. Justice V.N. Khare Pramod Swarup, Ms. Prerna Swarup and Prashant Chaudhary, Adv., for the appellants.

T.L.V. Iyer, Sr. Adv., S.S. Khanduja and B.K. Satija. Advs. with him for the respondents.

J U D G E M E N T The following Judgment of the court was delivered: DR. A.S. ANAND,J An answer to the question whether smt. Janak Dulari wife of Manraj Singh had any pre-existing right in the suit land whether after the coming into force of the Hindu succession Act, 1958 (hereinafter referred to us the Act) she became the full or obsolute owner of that land, would determine the fate of this appeal by special leave. The following table shows the relations to between the parties:-

Subransingh

Hakim singh Dashrath singh Hukum singh

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Dhurandhur singh
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Manraj Khedu Dilraj Rabiraj Pancham Singh Singh Singh Singh Singh =Janak =Kalawati Dulari Narbadia Osersingh Samsher Manpher Singh.

Raghubir singh & Ors.

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(Defendant No. 1)=Appellants
                  Gulabsingh   Jokhai      Sheojorsingh
                    (Pltiff.1)  Singh       (Pltff.3)
                              (Pltff.2)
                           (Respondents)
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Manraj singh son of Dhurandhar singh and grandson of Hakimsingh son of the common ancestor of the parties Subransingh, executed a will (Ex.D-5) on 23.7.1946. He died on 27.8.1945. Manpher Singh son of Dashrath Singh son of the common ancestor Subransingh filed a suit for cancellation of the will in which Smt.Janak Dulari widow of Manraj Singh and her grandson Reguhvir Singh (son of Narbadia) were both made parties. That suit ended in a compromise and a decree was passed in terms of the compromise and a decree was passed in terms of the compromise deed (ex-P-3) on 2.8.47. Clause Nos. 1 and 2 of the compromise decree read as follows:-

> "1. That as till her life time as Hindu widow per terms of will dated 23.7.1946 executed by Manraj in favour of Raghubar Singh Mst. Janak Dulari will remain in ownership and possession.
>
> 2. That after the death of defendant Janak Dulari Pawai (Jagirdar) Britt, Pawai 55/45, except land which was received in partition by the father of Manraj Singh, Dhurandher Singh all property moveable and immovable whole house will go to the heirs of Maniraj singh, Defendant Raghubar Singh as owner and to his heirs and legal representatives."

Smt. Janak Dulari continued to remain in possession of the suit property after the death of her husband Manraj Singh on 27.8.1946. She died on 3.11.1969. The respondents (sons of Samsher Singh son of Dashrath Singh) herein, after the death of Smt. Janak Dulari, filed a suit for possession of the suit land and mesne profits inter alia alleging that the land in suit was ancestral Pawai land of Manraj Singh and on the death of Manraj singh, Smt. Janak Dulari as his widow came into possession of the entire land. That Manraj Singh had no son and as his only issue, a daughter by name Narbadia, according to the law than in force in Rewa State (where the suit lands are situated) could not inherit from her father, he (Manraj Singh) executed a will on 23.6.46 gifting the entire property, movable and immovable, to Raghubir singh protecting the right of his wife Smt. Janak Dulari to enjoy the usufruct from the land during her life time. It was also alleged that Janak Dulari had no pre- existing right in the suit land and that the compromise decree (ex-P-3) had created only life interest in her and, therefore, despite Section 14 of the Hindu Succession Act, 1956, Smt. Janak Dulari, never became the full or absolute owner of the suit property. According to plaintiffs (respondents herein) they being the reversioners were entitled to possession as owners of the land

left by Manraj singh. They also questioned the validity of the sale deeds executed by Smt. Janak Dulari in favour of defendant vendors on the ground that sales had not been made for any legal necessity and, therefore, the vendees acquired no valid title to the property purchased by them. The plaintiffs further questioned the right of Raghubir singh to the property left by Manraj Singh on various grounds. They also claimed certain amounts by way of mesne profits but did not pursue that claim later on.

The suit was contested. The defence on the part of the appellants (defendants) was that Smt. janak Dulari had an inherent right of maintenance out of the estate of Manraj Singh and that the compromise decree (ex-P-3) had conceded ownership of the land to her in recognition of that right. It was claimed that Smt. Janak Dulari had become an absolute owner of that land by virtue of Section 14(1) of the Act and was, therefore, fully competent to transfer that land through sale deeds Exs. D-13 and D-14 and that those alienations could not be challenged by the plaintiffs after her death. It was further pleaded that after the death of Smt. janak Dulari, the land devolved on Raghubir Singh in accordance with the terms of the will of Manraj Singh (Ex.D-

5) and, therefore, the right of Raghubir Singh over the suit property, as its owner was beyond doubt. The right of the plaintiffs to claim ownership and possession of the suit land was denied.

The Trial Court framed a number of issues and ultimately after recording evidence dismissed the suit. The Trial Court held that Smt. Janak Dulari had been given life interest in the property of her husband through the will and that right was her pre-existing right and after the coming into force of the Hindu Succession Act in 1956, Smt. janak Dulari acquired absolute right over that property and she had every right to sell that property. The Trial Court, further held that since smt. Janak Dulari had got an absolute right over the suit property in 1956, therefore, the question whether the transfer was made for any legal necessity or not was irrelevant. The Trail court held that the plaintiffs had failed to establish that they had any right or title over the suit land. Aggrieved by the judgment and order of the Trial Court, the respondents-plaintiffs filed Civil Appeal No. 58 of 1978 which was heard by the First Additional District Judge. The appeal was allowed and the judgment and decree of the Trial Court was set-aside and plaintiff's suit was decreed in respect of certain portions of the suit land. The defendants were directed to deliver vacant possession of agricultural holdings measuring about 32 acres in village Baron, Tehsil Sirmaur, District Rewa to the plaintiffs. Aggrieved by the judgment and decree of the First Additional District Judge in civil Appeal No. 58 of 1978, the appellants filed a Second Appeal in the High Court of Madhya Pradesh. A learned Single Judge of the High Court partly allowed the appeal by setting aside plaintiffs suit in so far as it related to Khasra numbers 549, 538/3525, 486 and 551/3527 but maintained the decree and judgment made by the first appellate court in respect of remaining land. The High Court held that Smt. Janak Dulari had only been allowed to remain in possession and enjoy the property under the will (Ex.D-5) and that same right had been reiterated by the compromise decree (ex-P-3) as well. That the said right was not in lieu of any pre-existing right of maintenance. The High Court, therefore, held that Smt. Janak Dulari never became full owner of the estate and that her case was governed by sub-Section 14 of the Act. It was also held that she was not competent to transfer any portion of the suit land by sale and the transfers made by her therefore, did not bind the plaintiffs after her death. The High Court accepted the plea of the plaintiff-respondents that under the will the entire estate of the

testator was to devolve on the legatee Raghuvir singh and that no proprietory rights were ever created in favour of Mst. Janak Dulari by the will and that she was only to remain in possession of the land and enjoy the usufruct of the property during her life time. The High Court negatived the interpretation placed by the appellants on the terms of the Will (Ex.D-5) as well as the compromise decree and rejected the plea that Mst. Janak Dulari had acquired the property of her deceased husband in lieu of her right of maintenance. According to the learned singh died, Smt. Janak Dulari acquired no pre-existing right, which could mature into full ownership after the coming into force of the Act in 1956. In the words of the learned single Judge:

> "I am, therefore, of opinion that Janak Dulari was allowed to remain in possession and enjoy the property under the will Ex.D-5 and that the same right was reiterated by the compromise decree Ex.P/3 and not in lieu of any pre-existing right of maintenance. That being so, she never became the full owner of the estate and her case would be governed by sub-section (2) of Section 14 and not by sub-section (1) thereof. She was, therefore, not competent to transfer the lands to the appellants and those transfers, therefore, do not bind the plaintiffs after the death of Janak Dulari."

After holding that the civil court had jurisdiction to try the suit and that the challenge made on the basis of Section 37 of the V.P. Abolition of Jagirs and Land Reforms Act, 1952 could not operate as a bar, the learned single Judge held that in the absence of any allotment in plaintiff's favour, they could not lay any claim to the land comprised in four khasra Nos. namely 549, 538/3525, 486 and 551/3527. The second appeal was thus partly allowed and judgment and decree of the courts below insofar as it related to Khasra No.549, 533/3525, 486 and 551/3527 was set aside and the plaintiff-respondents suit relating to those Khasra numbers was dismissed. The decree passed by the first appellate court regarding the remaining part of the suit land was maintained. This appeal by special leave is directed against the judgment and order of the learned Single Judge in Second Appeal No. 402 of 1980 dated 20.1.1981.

We have heard learned counsel for the parties and examined the record. Before proceeding to consider the submissions made by learned counsel for the parties at the benefit would be appropriate to fist notice the relevant terms of the Will (Ex.D-5):

> "Now as I have grown old and cannot look after the household affairs property therefore my whole property moveable and immovable Pawai (Jagirdari) Britta, 55/45 Kothar (state owned) and 55/45 tenancy Khata No. 320 under 320 and under 320 area 8.03, 6.14, 16.92 rental Rs. 25 as six, Rs. five as nine and Rs.56 as six total areal 31.09 Area total rental Rs.87 as 5 with house gold silver, gram, Bullock, Cow, Buffalow, labourer, trees mango, Mahuwa, Bair, Bamur, Jamun, Kaitha, Imli etc. all property in my possession have given you all on condition that you remain obedient to me and do service and homage to me and to my wife and other members in my family till our death and after death perform Gaya Barahe and remain in possession of property moveable and immovable from generation to generation in case of need mortgage and sell. But till myself along with my wife are alive we shall have full control over all our property moveable and immovable. After demise of our lives you

> will have all power like ours in our property moveable and immovable. I, therefore, execute this gift deed so that it may remain in tact and may be helpful in case of need. The witnesses have put their signature below and stamp of Rs.5/-No.4291 dated 23.7.1946 is attached Miti Sawan Badi II Sambat 2003."

Since, there is some dispute about the correct translation of a material portion of the will, we reproduce that portion of the will in the vernacular, the language in which the will was written:

> "Jab tak ham apney dharam patni Samet jiwit hain tab tak kul jaidad kula wa gair Mankula men hamara pura Adhikar Kayam Rahega bad Khatama ham logon ki jindgi key tumhara Adhikar Kul Jaidad Kula we gair mankula me hamarey Adhikar ki tarah par hoga bas yeg Bakshishnamah likh diya ki sanad rahey wakata par kam Awey."

Clause (1) of the compromise decree (Ex.P.3.) dated 2.8.1947 reads:-

> "1. That as till her life time as Hindu widow per terms of Will dated 23.7.1946 executed by Manraj in favour of Raghubar Singh Mst. Janak Dulari will remain in ownership and possession."

The main issue on which learned counsel for the parties have addressed their arguments revolves around the interpretation of Section 14 of the Act which reads:

> "14.(1) Any property possessed by a female Hindu, whether acquire before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.
>
> Explanation.- In this sub- section, "property" includes both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as stridhana immediately before the commencement of this Act.
> (2) Nothing contained in sub- section (1) shall apply to any property acquired by way of gift or under a Will or any other instrument or under a decree or order of a Civil Court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property."

According to the learned Single Judge of the High Court, Smt. janak Dulari was only allowed to remain in possession of and enjoy the property left under the Will (Ex.D-5) during her life time and that the same position was reiterated in the compromise decree (Ex.P-3) and therefore she had only a restricted estate in that property. It was also held that the property had not been bestowed on her in lieu of any pre-existing right of maintenance and that her case was governed by Section 14(2) of the Act and not by Section 14(1) of the Act. In taking this view, the High court appears to have been mainly influenced by the fact that Hindu Women's Rights to Property Act, 1937 was not in force in

Rewa State in the year 1946, when Manraj Singh died and therefore Smt. Jank Dulari could not be said to have acquired any pre-existing right over the suit property in lieu of her right to maintenance, which right could ripen into an absolute ownership after the coming into force of the Act in 1956 by Virtue of Section 14(1) of the Act.

Before considering the terms of the Will (Ex.D-5) and the compromise decree (Ex.P-3), we consider it appropriate to first examine the question whether the right of maintenance, as a pre-existing right of a Hindu widow, is traceable only to the statutory provisions of the Hindu Women's Rights to Property Act, 1937 (which admittedly was not in force in Rewa State in 1946 when Manraj Singh died) as opined by the High court or does it flow from shastric Hindu law on account of the incidence of marriage itself and that right received protection by the Act in 1956 through Section 14(1) of the Act.

The first question, requiring an answer, therefore, is: "What are the obligations of a Hindu husband towards the maintenance of his wife both during his life time and after his death?' According to the old Shastric Hindu Law, marriage between two Hindus is a sacrament - a religious ceremony which results in a sacred and a wholly union of man and wife by virtue of which the wife becomes a part and parcel of the body of the husband. She is, therefore, called Ardhangani. It is on account of this status of a Hindu wife, under the Shastric Hindu law, that a husband was held to be under a personal obligation to maintain his wife and where he dies, possessed of properties, then his widow was entitled, as of right, to be maintained out of those properties. The right of a Hindu widow to be maintained out of the properties of her deceased husband is, thus, a spiritual and moral right, which flows from the spiritual and temporal relationship of husband and wife, though the right is available only so long as the wife continues to remain chaste and does not remarry.

Mulla in his classic work on "Hindu Law", 14th Edu., dealing with the characteristic of the right of maintenance of a Hindu wife observes:-

> "A wife is entitled to be maintained by her husband, whether he possesses property or not. When a man with his eyes open marries a girl accustomed to a certain style of living, he undertakes the obligation of maintaining her in that style. The maintenance of a wife by her husband is a matter of personal obligation arising from the very existence of the relationship, and quite independent of the possession by the husband of any property, ancestral or self- acquired."

(Emphasis ours) May he in his Treatise on "Hindu Law and Usage" 11th Edn., while tracing the history and origin of the right of maintenance of a Hindu wife says:-

> "The maintenance of wife by her husband is, of course, a matter of personal obligation, which attaches from the moment of marriage."

(emphasis ours) The obligations, under the Shastric Hinud Law, to maintain a Hindu widow out of the properties of her deceased husband received a statutory recognition with the coming into force of the Hindu Women's Rights to Property Act, 1937. The law on the subject was, thereafter,

consolidated and codified by the Hindu Married Women's Right to Separate Maintenance and Residence Act, 1946 which came into force on April 23, 1946. The right to maintenance of the Hindu widow, as a pre-existing right, was thus recognised by the two statutes referred to above but it was not created for the first time by any of those statutes. Her right to maintenance existed under the Shastric Hindu Law long before statutory enactments came into force. After the attainment of independence, the need for emancipation of women from feudal bondage became even more imperative.

There was growing agitation by Hinud women for enlargement of their rights as provided by the Shastric Hindu Law in various spheres. It was at this juncture that the Parliament stepped in and exacted various statutes like the Hindu Marriage Act, 1956, and the Hindu Succession Act, 1956 providing for intestate succession.

The Hinud Succession Act, 1956 made far reaching changes in the structure of Hindu law by removing the traditional limitations on the powers of a Hindu widow to deal with the property of her deceased husband, in her possession in lieu of her right to maintenance and the Act made her an absolute owner of the property, over which hitherto fore she had only a limited right.

A most elaborate discussion about the rights of a female Hinud before and after the coming into force of the Hindu succession Act, 1956 and particularly the provisions of Section 14 of the Act, is contained in a three Judge Bench judgment of this court in V Tulasamma and others vs. Sesha Reddy (Dead) by L.Rs., (1977) 3 SCC 99. dealing with the provisions of the Hindu Succession Act, 1956, this Court in V.Tulasmma and other vs. Sesha Reddy (Dead) by L.Rs., (supra) observed:-

> "The Act is a codifying enactment, and has made far-reaching changes in the structure of the Hindu law of inheritance, and succession. The Act confers upon Hindu females full rights of inheritance, and sweeps away the traditional limitations on her powers of dispositions which were regarded under the Hindu law as inherent in her estate....."

Fazal Ali, J in his exhaustive judgment, dealing with the question of the pre-existing right of a Hindu widow laid down:

"Thus on a careful consideration and detailed analysis of the authorities mentioned above and the Shastric Hindu Law on the subject, the following propositions emerge with respect to the incidents and characteristics of a Hindu woman's right to maintenance:

(1) that a Hindu woman's right to maintenance is a personal obligation so far as the husband is concerned, and it si his duty to maintain her even if he has no property. If the husband has property then the right of the widow to maintenance becomes an equitable charge on his property and any person who succeeds to the property carries with it the legal obligation to maintain the widow;

(2) though the widow's right to maintenance is not a right to property but it si undoubtedly a pre-existing right in property, i.e. it is a jus ad rem not jus in rem and it can be enforced by the

widow wh can get a charge created for her maintenance on the property either by an agreement or by obtaining a decree from the civil court;

(3) that the right of maintenance is a matter of moment and is of such importance that even if the joint property is sold and the purchaser has notice of the widow's right to maintenance, the purchaser is legally bound to provide for her maintenance;

(4) that the right to maintenance is undoubtedly a pre-

existing right which existed in the Hindu law long before the passing of the Act of 1937 or the Act of 1946, and is, therefore, a pre-

existing right; (Emphasis ours)

(5) that the right to

maintenance flows from the social and temporal relationship between the husband and the wife by virtue of which the wife becomes a sort of co-owner in the property of her husband, though her co-ownership is of a subordinate nature; and (6) that where a Hindu widow is in possession of the property of her husband, she is entitled to retain the possession in lieu of her maintenance unless the person who succeeds to the property or purchases the same is in a position to make due arrangements for her maintenance."

Dealing with the scope of Section 14 of the Act, the learned Judge opined that the provisions of the Section must by liberally construed in order to advance the object of the Act, which is "to enlarge the limited interest possessed by a Hindu widow" in "consonance with the changing temper of the times" and observed:-

> "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;

The learned Judge then interpreted Section 14 thus:

> "1. 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.
>
> 2. 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.

> 3. 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 are stricted 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 enlarge 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.
>
> 4. The use of express terms like 'property acquire by a female Hindu at a partition', 'or in lieu or maintenance', 'or arrears of maintenance', etc. in the Explanation to Section 14(1) cleraly makes sub-section (2) inapplicable to these categories which have been expressly excepted from the operation of sub-section (2)."

The judgment in Tulasamma's case has held the field till date (See also with advantage: Ram Kali(Smt.) vs. Choudhri Ajit Shankar and others, 1997 (9) SCC 613 and Bhoomireddy Chenna Reddy and another vs. Bhoospalli Pedda Verrapa (Dead) by L.Rs. and another 1997(10) SCC 673).

Thus, we find that there is enough authority for the proposition that the right to maintenance of a Hindu female is a pre-existing right, which existed in the Hindu Law long before the Act of 1937 or the Act of 1946 came into force and is not a creation of those statutes, which only recognised that position. In the words of Fazal Ali, J. in Tulasamma's case (supra):

> "The Hindu female's right to maintenance is not any 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.

Accordingly, we hold that the right to maintenance of a Hindu female flows from the social and temporal relationship between the husband and the wife and that right in the case f a widow is "a

pre-existing right", which existed under the Shastric Hindu Law long before the passing of the 1937 or the 1946 Acts. Those acts merely recognised the position as was existing under the Shastric Hindu Law and gave it a "statutory" backing. Where a Hindu widow is in possession of the property of her husband, she has a right to be maintained out of it and she is entitled to retain the possession of that property in lieu of her right to maintenance.

Explaining the meaning of the expression "possessed" as used by the legislature in Section 14(1) of the 1956 Act in Tulasamma's case (supra) this court held:

> "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." (Emphasis supplied) It is by force of Section 14(1) of the Act, that the widow's limited interest gets automatically enlarged into an absolute right notwithstanding any restriction placed under the document or the instrument. So far as sub-section (2) of Section 14 is concerned, it applies to instruments, decrees, awards, gifts etc., which create an independent or a new title in favour of the female for the first time. It has no application to cases where the instrument/document either declares or recognises or confirms her share in the property or her "pre-existing right to maintenance" out of that property. As held in Tulasamma's case (supra), 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) of the Act.

Having examined the legal position, let us now advert to the salient facts of a the present case.

The suit filed by Manpher Singh against Smt. Janak Dulari and Raghubar Singh, questioning the validity of the will executed by Manraj Singh on 23.6.(7).1946 and seeking the cancellation of the said will ended in a compromise decree dated 2.8.1947. Manraj Singh died on 27.8.1946. Smt. Janak Dulari died on 3.11.1969 and admittedly till her death she was in rightful possession of the suit property which position was duly recognised in the compromise decree also. The case set up by the plaintiff in the subsequent suit out of which the present appeal arises, as already noticed, was that Smt. janak dulari had no pre-existing right to the suit land but only a restricted right under the Will and that the compromise decree only created a life interest in her favour for the first time and therefore Smt. Janak dulari never became full or absolute owner of the property in dispute even after the coming into force of the 1956 Act and as such after her death, the plaintiffs became entitled to possession of the suit property, being reversioners of Manraj Singh. According to them her case was governed by Section 14 (2) of the Act. The case of the defendants on the other hand was that in the will itself, it was recognised that smt. Janak Dulari would remain in possession of the suit

property as its owner and this position was accepted in the compromise decree as well and as such her "ownership and possession" of suit property was protected by Section 14(1) of the Act. While dismissing the suit, the Trial Court opined that Smt. Janak Dulari had become an absolute owner of the suit property by virtue of Section 14(1) of the Hindu succession Act and, therefore she could legitimately alienate the property in favour of the defendants and that plaintiffs could make no challenge to it after her death.

Learned counsel for the parties have reiterated the stand of their respective clients before us also. With a view to appreciate the rival stand of the parties, it is appropriate to find out the intention of the testator when he executed the Will on 23.6.(7).1946 and the effect of the compromise decree.

We have referred to the relevant clauses of the Will as also clauses 1 and 2 of the Compromise Decree in an earlier part of this judgment. A careful reading of the Will shows that the testator clearly declared his intention to the effect that the "right and control" over the suit property shall vest in Raghuvir Singh after the demise of the testator and his wife and that during the life time of either of them, the "right, control and ownership" of the property would remain with the survivor. This position emerges quite clearly from the vernacular portion of the Will which has been referred to in an earlier part of this judgment. A free english translation of that vernacular portion would read:

> ".....Till such time as myself and my wife remain alive and till then we shall have full right, control and ownership of the entire property but after the death of both of us all those movable and immovable properties which vest in myself and my wife would devolve on Raghuvir Singh like they vest in us".

(Emphasis ours) It is, thus, clear from a reading of the above portion of the Will, that Manraj Singh and Janak dulari were to retain all their rights and control over the property as owners thereof till their death and all those rights which they had over the suit property, were to later on devolve upon Raghuvir Singh after their death. Raghuvir Singh was to acquire only such "rights" and "control" over the suit property, which the testator and his wife Smt. Janak Dulari themselves had in respect of the suit property during their life time. It si an admitted case of the parties that Smt. Janak Dulari had the "possession and control" of the suit property after the death of her husband and in terms of the Will that right and control was by virtue of the recognition of her "ownership" of the suit property. Even if it be assumed for the sake of argument, (though the intention of the testator was clearly otherwise) that the "right" which Smt. Janak dulari had under the Will, was to remain in possession of the property during her life time only and enjoy the property as well as its usufruct only during her life time, her limited estate ripened into full ownership by virtue of the coming into force of the Hindu succession Act. Admittedly she had continued to remain in possession of the property till her death in 1969, long after the coming into force of the Act in 1956. On a proper construction of the Will, we hold that the use of the expression "till myself along with my wife are alive we shall have full control over all our property movable and immovable" as owners unmistakably shows that the rights which Smt. Janak Dulari was declared to possess during her life time were the same as those of the testator himself and that she was to remain in "full control over all the property movable and immovable" during her life time as an owner of the property. After the

death of her husband, she continued to remain in possession of the suit property as its owner and she had full right and control over the same. Clause 1 of the Compromise Deed filed in the suit filed by Manpher Singh which reads:

> per terms of Will dated 23.7.1946 executed by Manraj in favour of Raghubar Singh Mst. Janak Dulari will remain in ownership and possession."

(Emphasis ours) lends support to the interpretation which we have placed on the Will. It recognises her right to remain in "ownership and possession" of the suit property. The terms of the Will and the compromise decree thus unmistakably show that Smt. Janak Dulari had the "ownership and possession of the suit property" till her death and (even if it be assumed to be her "limited estate", for the sake of argument) it ripened into full ownership by virtue of Section 14(1) of the Act.

The impugned judgment of the learned single judge of the High court suffers from a misconception about the nature of the "pre-existing right" of a Hindu widow. The opinion of the learned single that there could be no "pre-existing right" vesting in Smt. Janak Dulari because of the non- applicability of the 1937 Act in Rewa State is clearly erroneous. Her right to maintenance existed under the Shastric Hindu Law and was not created by the 1937 or 1946 Acts. Those Acts merely gave statutory backing to her existing rights.

The High Court also fell in error in holding that the case of Smt. Janak Dulari was covered by Section 14(2) of the Act and not by Section 14(1) of the Act. The 'Will' as already noticed declared and the Compromise decree recognised the right of Smt. Janak Dulari as an "owner in possession" of the suit property with all the "rights and control" over it. The compromise decree did not create any independent or new title in her favour for the first time. Sub-section (2) of Section 14, thus has no application to her case. By virtue of sub-section (1) of Section 14, the limited interest (even if it be assumed for the sake of argument that Smt. Janak Dulari had only a limited interest in the property of which she was in possession as an owner) automatically got enlarged into an absolute one, her case was clearly covered by Section 14(1) of the Act.

The impugned judgment of the High Court thus cannot be sustained. This appeal, therefore, succeeds and is allowed. The judgment and decree of the High Court is set-aside and that of the Trial Court restored. The parties are however directed to bear their own costs.