Munni Devi Alias Nathi Devi (Dead) Thr ... vs Rajendra Alias Lallu Lal (Dead) Thr Lrs. ... on 18 May, 2022

Author: Bela M. Trivedi

Bench: Bela M. Trivedi, Ajay Rastogi

REP

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5894 OF 2019

MUNNI DEVI ALIAS
NATHI DEVI (DEAD) …APPELLANT(S)
THR LRS. & ORS.

VERSUS

RAJENDRA ALIAS
LALLU LAL (DEAD) …RESPONDENT(S)
THR LRS. & ORS.

J U D G M E N T

BELA M. TRIVEDI, J.

1. The present appeal is directed against the judgment and decree dated 20.07.2017 passed by the High Court of Judicature for Rajasthan, Bench at Jaipur in S.B. Civil First Appeal No.120 of 1989, filed by the Appellants under Section 96 read with Order 41 of CPC, whereby the High Court while allowing the said First Appeal has set aside the judgment and decree dated 05.08.1989 passed by the Additional District & Sessions Judge, Class-1, Jaipur (hereinafter referred to as "the trial court") in Civil Suit No.56/73, and has dismissed the suit filed by the plaintiff Daulalji, the predecessor of the present appellants, against the defendant no. 1 Bhonri Devi, the predecessor of the present respondent Nos.1 to 3 and others.

2. In order to appreciate the controversy involved in the matter, it would be beneficial to reproduce the genealogical table/pedigree of the families of the parties.

Gopalji

Ram Ratanji	Abhadydutt Ji (Died issueless)	Bij Ballabji
Jagannathji	Rampratapji	Shrinarainji (Died issueless)
Sri Bakshji @ Gilji	Harinarayanji (Died issueless on 11.11.53)	Ganeshnarayanji Died 1938
Daulalji Exp.10.11.83 Plaintiff (Claims to be adopted by Sri Bakshji on 11.06.1916)		Dhannalaji (son) Died 1936
		Wife-Bhonri Devi (Defendant died on 17.04.1979)

3. The original plaintiff Daulalji filed the suit being No.56 of 1973 seeking possession of the suit property alongwith the mesne profits, against the original defendant - Smt. Bhonri Devi, widow of Late Shri Dhannalalji and against the other defendant Nos. 2 to 12, who were the tenants in the suit property. The suit property is the house property bearing No.1875, Chokdi Topkhana Desh, Jaipur which was an ancestral property in the hands of Harinarayanji and his brother Ganeshnarayanji. As per the case of the plaintiff – Daulalji, he was adopted by Sri Bakshji, who was the great-

grandson of their common ancestor Gopalji on 11.06.1916. The husband of the defendant No.1 Bhonri Devi, i.e., Dhannalalji predeceased his father Ganeshnarayanji in 1936. Ganeshnarayanji expired in 1938 and his brother Harinarayanji died issueless on 11.11.1953. As per the further case of the plaintiff Daulalji, Harinarayanji had executed a Will on 30.07.1949 in his favour, and upon his death, on 11.11.1953, he had become the owner of the suit property alongwith other properties of Harinarayanji by virtue of the said Will. Upon the death of Harinarayanji, the defendant No.1 – Bhonri Devi started harassing the plaintiff and therefore the plaintiff left the suit property on 25.12.1953, and since then the defendant No.1 was in possession of the suit property. The defendant Nos.2 to 12 were the tenants in the part of suit property. The plaintiff Daulalji claimed that after the death of Harinarayanji, he being the only male member in the family as well as the legatee under the Will of Harinarayanji, had become the sole owner of the suit property and, therefore, was entitled to recover the possession of the suit property from the defendant No.1 Bhonri Devi, who had no legal right or interest in the suit property.

4. The suit was resisted by the defendant No.1 Bhonri Devi by filing the written statement, denying the averments and allegations made in the plaint. She also denied any Will having been executed by Harinarayanji in favour of the plaintiff Daulalji and further contended that Harinarayanji, with a view to take her care, after the demise of her husband and father-in-

law, had started residing with her in the suit property, however, the plaintiff never resided in the suit property. It was further contended that the defendant Nos.2 to 12 were giving rent to her, she being the wife of Dhannalalji and daughter-in-law of Ganeshnarayanji, and thus, was in possession of the suit property as an owner and was maintaining herself from the income derived from the suit property. It was also contended that the limited right vested in her favour in the suit property, had enlarged into full ownership by virtue of Section 14(1) of the Hindu Succession Act, 1956, which came into force on 17.06.1956. She, therefore, contended that the suit at the instance of the plaintiff was not maintainable and was liable to be dismissed. The defendant Nos.2 to 8 and 10 to 12 had also filed their respective written statements contending, inter alia, that the defendant No.1 Bhonri Devi was the owner of the suit property, and they were her tenants and were paying rent to her only.

5. It may be noted that the original plaintiff Daulalji expired on 10.11.1983 and original defendant No. 1 Bhonri Devi expired on 17.04.1979, pending the suit. Thereafter, the suit was prosecuted by Munnidevi, daughter of original plaintiff – Daulalji and the legal representatives i.e. the nephews and niece of defendant No. 1 Bhonri Devi, who were substituted in her place pending the suit. The suit was decreed by the trial Court on 05.08.1989, against which the First Appeal being No. 120/1989 was preferred by the legal representatives of the defendant no. 1 Bhonri Devi.

Pending the appeal, Munnidevi, daughter of original plaintiff Daulalji also expired, and her legal representatives were substituted in her place. The said First Appeal having been allowed by the High Court vide the impugned order dated 20th July, 2017, the present appeal has been filed by the heirs and legal representatives of the said Munnidevi (hereinafter referred to as “the appellants”) against the respondent nos. 1 to 4 (contesting respondents) and respondent nos. 5 & 6 (Proforma respondents).

Submissions:

6. The learned Advocate Mr. Puneet Jain appearing for the appellants assailing the impugned judgement passed by the High Court made multiple submissions as follows:

> (i) The High Court had committed an error in holding that after the death of Shri Ganeshnarayanji in 1938, a limited right in the suit property was created in favour of Bhonri Devi and that the said Bhonri Devi had a right of maintenance even under the old Shastric Law, which had fructified into a full right under Section 14(1) of the Hindu Succession Act, 1956. According to Mr. Jain, the Hindu Woman Right to Property Act, 1937 had no application to the facts of the present case, as the suit property was located in the erstwhile State of Jaipur, where the said Act was not applicable. In the State of Jaipur, the Hindu Woman Right to Property Act, 1947 which came into force on 24.09.1947, was applicable, however, Shri Dhannalal having expired in 1936 and Ganeshnarayanji having expired in 1938 i.e., before the commencement of the Act of 1947, no limited right under the Act of 1947 was created in favour of the said Bhonri Devi. Even under Section 3(2) of 1937 Act, right in the joint family property was created only in favour of the widow of the deceased and not in favour of a daughter-in-law of a pre-deceased son. In this regard, he has placed

reliance on the decision of this Court in case of Ram Vishal (Dead) & Ors. by Lrs. Vs. Jagan Nath & Anr1.

(ii) Mere possession of property or a right to maintenance under the old Shastric Law did not give any right to the defendant no. 1 Bhonri Devi under Section 14(1) of the said Act of 1956. In this regard, Mr. Jain took the Court to the pleadings of the parties and submitted that there was no specific plea raised by defendant no. 1 in this regard and it (2004) 9 SCC 302 was only by way of alternative contention raised in the written statement, the defendant no.1 had sought to ascertain the plea of her having become full owner under Section 14(1) of the said Act of 1956.

(iii) There was no limited ownership created in favour of the defendant no.1 Bhonri Devi specifically in the suit property and that no presumption of limited ownership as sought to be asserted by her could be raised. The presumption must necessarily flow from some statutory or customary law of inheritance or by instrument or a decree or a device as contemplated in the Explanation II of Section 14(1) of the Act.

(iv) The possession of suit property was never given to the defendant no. 1- Bhonri Devi in the nature of right to possess in lieu of her right of maintenance creating limited ownership in the suit property. Mere possession without any vestige of right in property would not attract Section 14(1). The existence of a pre-existing “limited ownership” is a sine qua non for the application of Section 14(1), inasmuch as it is only the limited ownership which would fructify and blossom into a full ownership under the said provision. Where no such “limited ownership” is shown to have existed, Section 14(1) has no application.

(v) Right to maintenance is not a “Right in a specific property” but it is a “Right against the properties of the joint family generally.”

(vi) Mere right to maintenance without acquisition of title also would not be sufficient to attract Section 14. Placing reliance on the decision in case of Dindayal & Anr. vs. Rajaram2, he submitted that before any property could be said to be possessed by a Hindu Woman, as provided in Section 14(1) of the Act of 1956, it has to be established that the woman had a right to the possession of the property in question and that she must have been in possession of such property either actually or constructively.

(vii) A Hindu Female having a right to maintenance would not ipso facto create any charge on the property. A right to maintenance may amount to a legal charge if such charge is created either by an agreement between the parties or by a decree. In this regard, Mr. Jain has relied upon the provisions of Section 27 of the Hindu Adoption and (1970) 1 SCC 786 Maintenance Act, 1956 and the decision in case of Sadhu Singh vs. Gurdwara Sahib Narike3.

(viii) In the alternative, Mr. Jain submitted that the defendant no.1- Bhonri Devi's claims based on her right to maintenance could be raised only qua the share of Shri Ganeshnarayanji in the suit property which was to the extent of 1/4th of the suit property, and the remaining 3/4th share in the property belonged to the legitimate right of Daulalji and his heirs, as a consequence of the adoption of Daulalji and the Will dated 30.07.1949 executed by Harinarayanji in his favour. He also submitted that the probate in respect of the said Will was granted to the plaintiff Daulalji and that the claim of rival Will set up by the defendant no. 1 Bhonri Devi was negated by the Probate Court.

(ix) Lastly, he submitted that the suit property being an ancestral property of the appellants, it should have been kept within their family and the present respondents who are the nephews and niece of the deceased Bhonri Devi, could not claim any right in the suit property. (2006) 8 SCC 75

7. The learned Senior Advocate Mr. Pallav Shishodia appearing for the contesting respondents, supporting the findings recorded by the High Court in the impugned order, made following submissions:

(i) The exclusive possession of widow of HUF property itself would create a presumption that such property was earmarked for realization of her pre-existing right of maintenance, more particularly when the surviving co-

parcener did not earmark any alternative property for recognizing her pre-existing right of maintenance. In this regard, Mr. Shishodia has invited the attention of the Court to the ratio laid down by this Court in case of Shrimati Rani Bai vs. Shri Yadunandan Ram & Anr 4 and the judgments of Rajasthan High Court in case of Mst.

Gaumati Vs. Shankar Lal5 and Mool Kanwar Vs. Jeewa Lal6.

(ii) The exclusive possession of defendant Bhonri Devi, after the death of Harinarayanji was never questioned by the plaintiff Daulalji. The suit property was only about 1/4th of the total HUF properties held by Harinarayanji and Ganeshnarayanji, yielding nominal rentals just enough for 1969 (1) SCC 604 AIR 1974 Raj.147 AIR 1982 Raj.267 her sustenance, as compared to much bigger house at Purani Basti, two shops at Chandpole and other properties taken away by the original plaintiff-Daulalji.

(iii) As regards the interpretation of Section 14(1) of the Act of 1956, he submitted that the pre-existing right of maintenance in favour of a widow would have remained only a lofty right throughout her life without any vindication, and would have remained fettered at the mercy of surviving co-parceners, if the case of the plaintiff was accepted that the said Bhonri Devi enjoyed the suit property only by way of grace and concession of the plaintiff-Daulalji. Otherwise, the very purpose of Section 14(1) of the Act, which was enacted to confer absolute ownership on the Hindu widow in settled possession of HUF property in lieu of her pre-existing right of maintenance, would

be frustrated. Mr. Shishodia drew the attention of the Court to the various observations made and findings recorded by this Court in case of V.Tulasamma and Ors. vs. Sesha Reddy (Dead) by Lrs7. According to him, once the pre-existing right was recognized, the (1977) 3 SCC 99 consequences of Section 14(1) cannot be denied to a Hindu widow.

(iv) The expression "possession" contained in Section 14(1) is required to be given the widest possible meaning to include actual as well as constructive possession, like attornment of tenants in the present case. Likewise, the expression "acquire" is also required to be given a widest possible meaning to include acquisition by possession, especially when such possession of widow already satisfied her pre- existing right of maintenance. To elaborate his submission, Mr. Shishodia has placed reliance on the decision of this Court in case of Bai Vajia (Dead) by Lrs. Vs. Thakorbhai Chelabhai and Others 8.

(v) Till the death of Harinarayanji in 1953, he held HUF properties as karta and the last surviving co-parcener in the direct line. However, all the rights, title and interest of Harinarayanji and his successor were subject to the pre- existing right of maintenance in favour of Bhonri Devi and, therefore, even Harinarayanji could not have bequeathed more than whatever right, title or interest he had in the (1979) 3 SCC 300 HUF properties, by executing the Will, in view of Section 30 of the Indian Succession Act, 1925. The plaintiff Daulalji, therefore, had also got the suit property as a legatee or co-parcener subject to the limited estate of Bhonri Devi, whose pre-existing right of maintenance from the suit property, made her absolute owner after Section 14(1) of the Act of 1956 came into force.

Analysis:

> 8. Though number of issues were raised by the parties during the course of trial before the Trial Court and during the course of the appeal before the High Court, the learned Counsel Mr. Puneet Jain for the appellants has not disputed before this court that Bhonri Devi had a right of maintenance from the estate of her husband's joint family. He also has not disputed that Bhonri Devi was residing in the suit house since the time Harinarayanji was alive i.e., prior to 11.11.1953, and that after the death of Harinarayanji, Bhonri Devi continued to live in the said house and was collecting the rent from the tenants who were occupying part of the suit premises. However, Mr. Puneet Jain has seriously disputed Bhonri Devi's right to maintenance from the suit property alone. He has disputed her claim of acquiring the suit property in lieu of her maintenance for being a full owner, as contemplated in Section 14(1) of the Act. According to him, vestige of interest against the property could not be said to be the same as the vestige in the property.

In absence of creation of any charge or execution of a document recognising her right of maintenance in the suit property, it could not be said that she had pre-existing or limited ownership in the suit property.

9. Similarly, learned Senior Advocate Mr. Shishodia for the concerned respondents has also not pressed into service the contentions raised by Bhonri Devi in the suit with regard to the plaintiff Daulalji being a stranger to the joint family of her husband, and with regard to his adoption by Sri Bakshji. He has also not pressed into service the issue with regard to the Will executed by Harinarayanji in favour of Daulalji. However, Mr. Shishodia urged that all rights, title or interest of Harinarayanji were subject to the pre-existing right of maintenance of Bhonri Devi, and he could not have bequeathed by way of Will to Daulalji, more than whatever right or interest he had in the suit property. Admittedly, Bhonri Devi was in possession of the suit property and was collecting the rent from the tenants occupying part of suit property. Therefore, according to Mr. Shishodia, her settled possession of suit property in lieu of her pre-existing right of maintenance, entitled her to become full owner of the suit property in view of Section 14(1) of the Act of 1956.

10. The main issue therefore, whether Bhonri Devi, the predecessor of the present respondents had become an absolute owner on coming into force the Act of 1956, revolves around the interpretation of Section 14 thereof. It 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 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."

11. From the plain reading of Section 14(1) along with the Explanation thereto, it emerges that in order to become a full owner and not a limited owner, of a property by virtue of Section 14(1), a female Hindu, before or after the commencement of Act of 1956, must be in possession of the property, and it must have been acquired by her 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, or any such property must have been held by her as stridhana immediately before the commencement of the Act.

12. In the instant case, we are concerned with the claim of Bhonri Devi of having become the full owner in respect of the suit property on the ground that she was in settled legal possession of the suit property before and after the commencement of the Act, in lieu of her pre-existing right of

maintenance, and such limited ownership right had fructified into full ownership by virtue of Section 14(1). The High Court while discussing about the right of a Hindu widow to the property, has observed that the Hindu Women's Right to Property Act, 1937 was in force in the year 1937 when Ganeshnarayanji, father-in-law of Bhonri Devi expired in 1938, and that even prior to the said Act of 1937, the right of Hindu widow was recognised as per the old shastric customs prevalent in the area. In our opinion, the Hindu Women's Rights to Property Act, 1937 conferred right on Hindu widow to the property of her husband, who died after the commencement of the said Act of 1937 and not prior thereto. Bhonri Devi's husband Dhannalalji having expired in 1936, the said Act of 1937 would not be applicable to facts of the case. However, prior to the said Act of 1937, the right to maintenance of Hindu widow was recognised in Shastric law. This court in case of V.Tulasamma and other vs. Sesha Reddy(Dead) (supra) has elaborately considered the pre-existing right to maintenance of a Hindu woman while considering the provisions of Section 14 of the said Act of 1956. Justice fazal Ali, as he then was, after quoting the authorities on the subject and elucidating the nature and extent of right of a Hindu wife to maintenance, summarised the position in para 62 as under: -

> "62. We would now like to summarise the legal conclusions which we have reached after an exhaustive consideration 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.
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> (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."

13. Following the said observations made in the case of V.Tulasamma (supra), this court in Raghubar Singh & Ors vs Gulab Singh & Ors9 held as under:

> "22. The judgment in Tulasamma case [(1977) 3 SCC 99] has held the field till date. (See also with advantage: Ram Kali v. Choudhri Ajit Shankar [(1997) 9 SCC 613] and Bhoomireddy Chenna Reddy v. Bhoospalli Pedda Verrappa [(1997) 10 SCC 673].)
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> 23. 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 case [(1977) 3 SCC 99] : (SCC p. 135, para 62) "(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."

24. 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 of 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 (1998) 6 SCC 314 out of it and she is entitled to retain the possession of that property in lieu of her right to maintenance.

25. Explaining the meaning of the expression "possessed" as used by the legislature in Section 14(1) of the 1956 Act in Tulasamma case [(1977) 3 SCC 99] this Court held: (SCC p. 136, para 62) "(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."

26. 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 case [(1977) 3 SCC 99] 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."

14. In view of the above, there remains no shadow of doubt that a Hindu woman's right to maintenance was not and is not an empty formality or an illusory claim being conceded as a matter of grace and generosity. It is a tangible right against the property, which flows from the spiritual relationship between the husband and the wife. The said right was recognised and enjoined by pure

Shastric Hindu Law, which existed even before the passing of the 1937 or the 1946 Acts. Those Acts merely gave statutory backing recognising the position as was existing under the Shastric Hindu Law. Where a Hindu widow is in possession of the property of her husband or of the husband's HUF, she has a right to be maintained out of the said property. She is entitled to retain the possession of that property in lieu of her right to maintenance. Section 14(1) and the Explanation thereto envisages liberal construction in favour of the females, with the object of advancing and promoting the socio-economic ends sought to be achieved by the said legislation. As explained in V.Tulasamma (supra) case, the words "possessed by" used in Section 14(1) are of the widest possible amplitude and include the state of owning a property, even though the Hindu woman is not in actual or physical possession of the same. Of course, it is equally well settled that the possession of the widow, 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.

15. The undisputed facts in the instant case are that Dhannalalji, the husband of Bhonri Devi expired in 1936, Ganeshnarayanji, the father-in-law of Bhonri Devi expired in 1938 and Harinarayanji, the brother of Ganeshnarayanji died on 11.11.1953. Daulalji was adopted by Sri Bakshji in the year 1916. Harinarayanji, Ganeshnarayanji and Sri Bakshji had common ancestor Gopalji. It is also not disputed that the suit property was an ancestral property in the hands of Harinarayanji and Ganeshnarayanji. It is also not disputed that Bhonri Devi was staying in the suit property before the death of Harinarayanji, and after his death she was in possession and in charge of the said property, and was maintaining herself by collecting rent from the tenants who were occupying part of the suit property.

16. Now it appears from the documents on record that the rent notes (Exhibit A-2 to A-11) executed during the period 1955 to 1965 in respect of the part of the suit property, were executed in the name of Bhonri Devi. The concerned defendants in the suit had also filed their written statements, stating that they were paying rent to Bhonri Devi only. It further appears from the document (Exhibit A-13) that Daulalji had raised an objection against Bhonri Devi paying the house tax in respect of the suit property and that the Municipal Commissioner, Jaipur vide order dated 28.03.1957 had observed that Bhonri Devi was paying the tax in the past also. An appeal against the said order was preferred by Daulalji before the Administrator of Municipal Council, Jaipur however the same was also rejected vide the order dated 28.01.1959. It was observed therein that "In this case there is a dispute regarding ownership. Municipal Commissioner who is the reversing authority in his judgment dated 28.03.1957 held that Bhonri Devi who was paying tax to the municipality in the past, should pay the tax and for question of title the concerned party should seek remedy in the Civil Courts."

17. From the said documents it clearly emerges that Bhonri Devi was paying the house tax prior to 1956 and was collecting the rent from the tenants prior to and after 1956. Pertinently from the document Exhibit-54, it emerges that in 1940 Bhonri Devi, when she was staying with her in-laws, had no source of maintenance, and therefore she was granted Rs. 2.50 per month by way of maintenance, by the Punya Department of the Government. She claiming to be a PARDANASHEEN lady had authorised Daulalji to collect the said amount of maintenance. The said document clearly shows that Bhonri Devi was residing in the suit house since 1940. Be that as it may, it was well established that Bhonri devi was in possession of the suit house before and after the death of

Harinarayanji in 1953 and had continued to remain in possession thereafter and was collecting rent from the tenants who were in occupation of part of the suit premises since 1955, till the date of filing of the suit in 1965 by the plaintiff Daulalji.

18. The afore-stated facts and circumstances clearly established that Bhonri devi had long settled possession of the suit property, which she had acquired in lieu of her pre-existing right to maintenance, prior to the commencement of the Act of 1956, which entitled her to become a full owner of the suit property by virtue of Section 14(1) of the said Act. Her exclusive possession of suit property after the death of Harinarayanji in 1953 i.e., prior to coming into force of the said Act in 1956, was not only not disputed but was admitted by the plaintiff Daulalji in the plaint itself. Her pre-existing right to maintenance from the estate of the HUF of her husband was also well established. The submission of Mr. Jain for the appellants that mere right to maintenance would not ipso facto create any charge on the property and that for creating legal charge recognising right of Hindu women to maintenance required execution of a document, device or agreement, cannot be countenanced. Her pre-existing right to maintenance, coupled with her settled legal possession of the property, would be sufficient to create a presumption that she had a vestige of right or claim in the property, though no document was executed or specific charge was created in her favour recognizing her right to maintenance in the property.

19. It may be noted that in the Will executed by Harinarayanji in favour of Daulalji, there was no mention of the suit property. What was stated in the Will was that whatever movable and immovable property, which belonged to Harinarayanji would be devolved upon Daulalji. It was only in the Probate proceedings filed by Daulalji in respect of the said Will, he had shown the suit property in the Schedule. It is true that the objections raised by Bhonri Devi against granting of Probate in favour of Daulalji were not accepted by the Probate Court, and the alleged Will executed by Harinarayanji in favour of Bhonri Devi was also not proved by her in the said proceedings. Nonetheless, in view of her pre-existing right to maintenance from the estate of the HUF of her husband and in view of her exclusive settled possession of the suit property prior to and after the commencement of the Act of 1956, the only conclusion which could be drawn, would be that Bhonri Devi had acquired the suit property in lieu of her pre-existing right to maintenance, and that she had held the suit property as the full owner and not limited owner by virtue of Section 14(1) of the said Act of 1956.

20. As stated earlier, Hindu woman's right to maintenance is a tangible right against the property which flows from the spiritual relationship between the husband and the wife. Such right was recognized and enjoined under the Shastric Hindu Law, long before the passing of the 1937 and the 1946 Acts. Where a Hindu widow is found to be in exclusive settled legal possession of the HUF property, that itself would create a presumption that such property was earmarked for realization of her pre-existing right of maintenance, more particularly when the surviving co-parcener did not earmark any alternative property for recognizing her pre-existing right of maintenance. The word "possessed by" and "acquired" used in Section 14(1) are of the widest amplitude and include the state of owning a property. It is by virtue of Section 14(1) of the Act of 1956, that the Hindu widow's limited interest gets automatically enlarged into an absolute right, when such property is possessed by her whether acquired before or after the commencement of 1956 Act in lieu of her right to

maintenance.

21. In that view of the matter, we are of the opinion that the High Court had rightly held that Bhonri Devi had pre-existing right to maintenance in the suit property that had ripened into full ownership by virtue of Section 14(1) of the Act of 1956.

22. The present appeal being devoid of merits is dismissed.

..... J.

[AJAY RASTOGI] .....J. [BELA M. TRIVEDI] NEW DELHI;

18.05.2022