

(1971) 03 AHC CK 0034

Allahabad High Court

Case No: Second Appeal No. 2121 of 1961

Mahadeo Pandey

APPELLANT

Vs

Mt. Bensraji

RESPONDENT

Date of Decision: March 30, 1971

Acts Referred:

- Hindu Succession Act, 1956 - Section 14(1), 14(2)

Citation: AIR 1971 All 515 : (1971) 41 AWR 426

Hon'ble Judges: K.N. Srivastava, J

Bench: Single Bench

Advocate: G.D. Srivastava, for the Appellant; M.P. Singh, for the Respondent

Final Decision: Dismissed

Judgement

K.N. Srivastava, J.

This is an appeal against the judgment and decree passed by the I Additional Civil Judge, Basti, dismissing the appeal against the judgment and decree passed by the Munsif, Basti.

2. The facts giving rise to this appeal are as follows:

3. The respondent filed this suit with the allegation that she was the owner of the plots and trees and she had a right to construct a house and to cut the trees which she inherited from her husband as his widow and she became the sole owner of the same after the enforcement of the Hindu Succession Act, 1956. The suit was contested by the defendant appellant and inter alia it was pleaded that there was a compromise whereby the plaintiff accepted the widow's rights and agreed not to cut the trees and therefore the effect of the earlier compromise would not be undone by the enforcement of the Hindu Succession Act. The plaintiff's contention found favour with the trial court and the lower appellate court with the result that the plaintiff's suit was decreed. Being dissatisfied, the defendant has filed this appeal.

4. The learned counsel for the appellant contended that as provided under Sub-section (2) of Section 14 of the Hindu Succession Act, the plaintiff only got a widow's right in the property and as such the views taken by the trial court and the lower appellate court were not correct. Sub-section (2) of Section 14 reads as below:--

"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."

5. The word "acquired" has special significance in interpreting the above sub-section. The use of the word "acquired" left no room for doubt that if the property was acquired by a gift or under a will or other instrument or under a decree or order of the court or under an award and by that if an interest was created, then Sub-section (1) of Section 14 would not apply and the widow would not get an absolute right as laid down in Sub-section (1) of Section 14 of the Hindu Succession Act. In the instant case, after the death of her husband, the plaintiff entered over this property as his widow. It is not denied that the plaintiff's husband was separate from the defendant and the property in dispute had fallen to the share of the plaintiff's husband at the time of separation. Therefore, the widow's right was not acquired by the plaintiff under the subsequent compromise decree which the parties entered in Suit No. 69 of 1949. The widow's right had been inherited by the plaintiff long before the compromise was arrived at. No new right or interest was created in favour of the widow by that compromise. All that was agreed by this compromise was that the plaintiff was to remain in possession over the disputed property as a limited owner and was not to waste the property.

Thus by this compromise, the future right of inheritance of the defendant was safeguarded and no new right or interest was created in favour of the plaintiff. Therefore, the plaintiff did not acquire the right under any of the conditions mentioned u/s 14(2) of the Hindu Succession Act, and as such, the above contention of the learned counsel for the appellant has no force in it.

6. The learned counsel for the appellant relied on a Single Judge decision of the Orissa High Court [Mali Bewa Vs. Dadhi Das](#), . In Mali Bewa's case AIR 1960 Oris 81 after the death of the husband of the widow, the property was inherited by the adopted son and the adopted son gave certain property to the widow by way of maintenance. Therefore, the property which the widow got was through the compromise which was entered between her and her adopted son. The facts of Mali Bewa's case, AIR 1960 Orissa 81 are absolutely different from the facts of the present case and therefore the aforesaid decision would not apply to the facts of the present case. In my opinion, by the compromise, no right or interest was acquired by the widow and as she had inherited the property as widow of her deceased husband long before the compromise, therefore, Section 14(2) would not be of any

help to the defendant.

7. It was next argued that the compromise decree being based on a contract was binding on the parties and the subsequent enactment will not undo the effect of the contract which the parties entered into. Section 14(1) of the Hindu Succession Act lays down that:

"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."

8. By this compromise, nothing special was done except that the right of the widow to hold the property as a limited owner was acknowledged and that the widow agreed not to waste the property which she inherited as a widow. By this compromise, only what was laid down in law was acknowledged and agreed. The law clearly laid down that after the death of the husband, the widow would get only a limited interest and the compromise did not go beyond what the law laid down and therefore this compromise would not undo the mandatory provisions of Section 14(1) of the Hindu Succession Act. The above argument too has, therefore, no force in it.

9. For the above reasons, the appeal fails. It is hereby dismissed with costs.