

(1997) 01 AHC CK 0118

Allahabad High Court

Case No: Second Appeal No. 2176 of 1984

Smt. Savitri Devi and Another

APPELLANT

Vs

Smt. Ganga Devi and Others

RESPONDENT

Date of Decision: Jan. 9, 1997

Acts Referred:

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

Citation: (1997) RD 602

Hon'ble Judges: A.P. Singh, J

Bench: Single Bench

Advocate: R. Pandey, for the Appellant; A.K. Sachan, for the Respondent

Final Decision: Dismissed

Judgement

A.P. Singh, J.

Though the record of the lower court has not been received but on the agreement of the counsel for parties, who stated that the case does not involve any question of fact and can be decided only on the question of law involved in the case for which the record is not necessary, the case was accordingly taken up and argument of the parties were heard.

2. Present appeal has been filed by Smt. Savitri Devi and another who were Defendants in a suit which was brought by Smt. Ganga Devi for possession after eviction and also for payment of damages. Both the Plaintiff and Defendant Smt. Savitri Devi happened to be daughters of Poley from Smt. Batasa his wife. Poley died on 18.7.1951. Before his death he had executed a registered will on 6.7.1950 by which he had bequeathed the property in suit giving life interest in the property in favour of Batasa Devi, the mother of Plaintiff and Defendant Smt. Savitri Devi with the condition that she will not be entitled either to mortgage the property or to sell it and after her death the property would devolve on the Plaintiff, one of the daughters of Poley and Batasa.

3. Defendants contested the suit mainly on the ground that u/s 14(1) of Hindu Succession Act, 1956 the life interest created in favour of Smt. Batasa Devi in the will stood transformed into full interest in favour of Smt. Batasa, therefore, after the death of Smt. Batasa Devi the Plaintiff as well as Defendants who happened to be heirs of Smt. Batasa Devi inherited the property in suit equally.

4. The question which arises for consideration in the present appeal which has been filed by Defendant is whether the right created in favour of Smt. Batasa Devi in the will deed executed by Poley which created a limited right stood transformed into an absolute right in view of the provisions of Sub-section (1) of Section 14 of Hindu Succession Act, 1956. If the right conferred in favour of Smt. Batasa Devi in the will got transformed into an absolute right as a result of the provisions of Sub-section (1) of Section 14, then there should be no iota of doubt that the Defendant-Appellant would be entitled to one half share in the property as its co-tenant, if however, the bequeath made by Poley in favour of Smt. Batasa Devi giving to her only a limited right during her life time with the reservation that on her death the property shall devolve on the Plaintiff Ganga alone, in that event Defendant-Appellants will have no claim in the property in suit and the suit must succeed and appeal must fail. Both the courts below have held against the Defendants, hence this appeal by the Defendants.

5. Barrister Ram Adhar Pandey learned counsel for Appellants has placed reliance on a Division Bench judgment of the Bombay High Court in Bapusaheb Bhausaheb Patil and Another Vs. Gangabai and Others, , in support of his contention that the right acquired by Smt. Batasa in the will though was a limited right but with aid of Section 14 of the Act that right got converted into an absolute right inasmuch as she was also natural heir of Poley. Elaborating his submission Barrister Pandey would say that by the natural heir of Poley Smt. Batasa apart from the will also inherited the property in suit in her own right hence In view of the provisions of Section 14(1) that right of Smt. Batasa became an absolute right and the clog on that right of her stood removed with the result both Plaintiff and the Appellant will equally get the property as heirs of Smt. Batasa. This argument has been advanced on the basis of the view expressed by Bombay High Court in B. B. Patil's case (supra).

6. On behalf of Respondent, it was argued that Bombay High Court judgment is of no avail to the submission advanced by the learned counsel for Appellant and what is attracted on the facts of the present case is Clause (2) and not Clause (1) of Section 14. Before dealing with the respective submissions of the learned counsel for parties, it is necessary to notice the provision of law on which reliance has been placed by both the learned counsel for the parties. Section 14 of the Hindu Succession Act reads as follows:

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.

7. A reading of Sub-section (1) of Section 14 of Hindu Succession Act, 1956 would indicate that if a Hindu female is possessed as a limited owner of a property movable or immovable before or after the commencement of Act, she will hold that property as full owner as soon as the provisions of the Act are enforced. As per the Explanation appended to Sub-section (1), property which is held by a Hindu female may be due to the reason of inheritance or any other device or may have come to her by way of partition or in lieu of maintenance or as arrears of maintenance or by way of gift from any person, whether a relative or not, before at or after her marriage or on account of her own skill or exertion or by purchase or by prescription, or in any other manner whatsoever and also a property held by a Hindu female as her Stridhana before the commencement of the Act. Thus, the Explanation does not make any exemption in respect of the nature of the property or with regard to the nature or source of title of a Hindu female. Whatever the nature or source of title be, if the property is held by her in her own right, her right in the property which prior to the enforcement of the Act was a limited right stands transformed into full absolute right and she ceases to be a limited owner of that property. However, an exception has been carved out by Sub-section (2) of Section to Sub-section (1). According to Sub-section (2), if a Hindu female has acquired a limited right either by way of gift or under a will or by any other instrument of title or under a decree or order of the court or under an award made in that regard, then that right which has been acquired by her from that document or will or award or decree shall remain constant and would not get transformed into an absolute right by virtue of Sub-section (1). In other words, Sub-section (1) of Section 14 would have no application so as to convert the right which is held by a Hindu female in a property which has been acquired by her in the manner indicated in Sub-section (2), that is to say, by a gift or by a will or under a decree or under an award wherein only a limited right has been given to her, such a limited right will not be affected by the

provisions of Sub-section (1). The case which has been decided by the Bombay High Court is covered by Sub-clause (1), whereas the present case is covered by Sub-clause (2) of Section 14.

8. In B. B Patil's case (*supra*), all the properties of the family were in the possession of one Devgonda's branch. On the death of Devgonda and Appa of that branch in the year 1902, Hirabai, a Hindu female, came into possession both of agricultural land and houses which belonged to the family of Devgonda and Appa. Dispute, however, arose between Nemgonda and Hirabai which came to be referred to an Arbitrator who made his award on 15.10.1903 which was made rule of the court by court's decree dated 24.10.1903. Under the decree, out of 130 acres of land and six houses and house sites possessed by Hirabai, 65 acres of land and one house were allotted to Hirabai, out of this 65 acres of land 30 acres of land were ear-marked for making the provision of maintenance and marriage of her three daughters and the rest of the property was ordered to be retained by Hirabai for her life with certain restrictions. 30 acres of land was given to her three daughters was by way of absolute gift, but so far as, the land which was allotted to Hirabai was concerned, it was to be in her possession only for her life time whereafter it was to revert back to Nemgonda.

The dispute in the case was thus confined to the remaining 35 acres of land and the house which fell in the share and possession of Hirabai for her life time. She died on 25.2.1967 by that time Nemgonda too was dead and his sons, viz., Defendants No. 2 to 6 were in the village who got their names entered in the revenue records and also obtained possession of the same. The two daughters of Hirabai filed a suit seeking possession of the properties belonging to Hirabai (30 acres of land and the house) claiming title in the same by way of inheritance from Hirabai. It was alleged by them that though Hirabai was given limited ownership in the properties under the decree of court but she became its full owner after the commencement of the Hindu Succession Act, 1956 u/s 14(1), therefore, the Plaintiffs and their sister, Defendant No. 1, were entitled to inherit the property in suit after the death of their mother Smt. Hirabai, It was stated that the properties which were the subject-matter of that suit had been allotted to Hirabai in the award in lieu of her maintenance.

9. Bombay High Court on the above facts concluded in B. B. Patil (*supra*) that since Hirabai possessed entire properties belonging to the family of Devgonda and Appa on their death in the year 1902, her right over the properties which was given to her as her share by way of maintenance In the decree passed by court following the award made by the Arbitrator was only by way of recognition of her pre-existing right in the properties which were held by her from before the passing of that decree. The decree was thus not a source for the creation of her right in the properties which were subject-matter of litigation in the case before the Bombay High Court, it only made an arrangement recognising the shares of the parties to the case in the properties which Hirabai held alone in her own right as a limited

owner from before the dispute had arisen. The Bombay High Court recognised the distinction between a right of a Hindu female which is created by an instrument as is referred in Sub-section (2) of Section 14 and her pre-existing right which is only recognised by an instrument and held that If the right of a Hindu female in a property was created for the first time by an instrument and the instrument in question was the source of her right in the property, then Clause (2) of Section 14 was attracted and the limited right given to her in the instrument was to remain intact notwithstanding the provisions of Section 14(1) but where the instrument in question only recognised a pre-existing right of a Hindu female in the property in that case the provisions of Sub-section (1) of Section 14 were attracted and the limited right possessed by her in that property would get transformed into an absolute right by virtue of Section 14(1) and the explanation appended to it.

10. Facts of the present case, however, are quite different. In the present case, Poley died in the year 1951, before his death in the year 1950, he executed the will giving Smt. Batasa a limited right in the property in suit with the restriction that she will not be entitled to transfer or otherwise dispose of that property even by way of mortgage or sale and on her death, the said property was to devolve on the Plaintiff Ganga Devi alone. Thus, the right in the property In suit was for the first time created by the instrument of will which was executed by Foley in favour of Smt. Batasa. During the life time of Poley, Batasa had no right over the property in suit. She also did not possess the property in her own right either before or after the death of Poley. She was given the right in the suit property only by the instrument of will executed by Poley during his life time which, therefore, was the source of her right in the suit property. Thus, much before the enforcement of the Act on 17th June, 1956, Smt. Batasa had acquired a limited right in the suit property under the will, which had been executed by Poley, as its limited owner, therefore, enforcement of the Act on 17.6.56 did not bring about any transformation in the right of Smt. Batasa in the property in suit. The exception carved out by Sub-section (2) of Section 14 stood in her way to keep intact the limited right she was given by the will in the property.

11. There is thus material difference between the facts of Bombay case and the facts of the present case. Whereas in Bombay case, the Hindu female held the property as a limited owner from before the making of the award and passing of the decree by the court. The award and the decree only recognised the pre-existing rights of the Hindu female in properties which were held by her from before the making of the award and decree, whereas in the present case Smt. Batasa did not hold the property in her own right at any time before execution of the will by Poley. Her right in the property in suit was vested for the first time in the will which was executed by Poley in her favour. Therefore, no parity can be drawn between Bombay case and the present case. Facts in the two cases are quite distinct. Whereas in Bombay case provisions of Clause (1) of Section 14 are attracted, in the present case provisions of Clause (2) of Section 14 are attracted.

12. The view that I have taken in this case is supported by the view expressed by the Supreme Court in [Kothi Satyanarayana Vs. Galla Sithayya and Others](#), wherein the Supreme Court dealing with somewhat similar situation observed in Para 5 "the settlement deed is an instrument contemplated under Sub-section (2) and admittedly it created a restricted estate in favour of widow. Therefore, Sub-section (1) of Section 14 would not be attracted."

13. Bombay High Court has also taken the same view in so far as it held Clause (2) of Section 14 will be applicable where the right is created for the first time by the instrument of will or gift or by decree of the court.

14. In the view of the above discussion the contention of the learned counsel for Appellant is not at all acceptable. There is no merit in the appeal which is accordingly dismissed with costs.