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**(1971) 02 MP CK 0003**  
**Madhya Pradesh High Court**  
**Case No:** S.A. No. 67 of 1966

Imrat and another

APPELLANT

Vs

Mst. Pyaribahu and another

RESPONDENT

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**Date of Decision:** Feb. 11, 1971

**Acts Referred:**

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

**Citation:** (1977) ILR (MP) 787 : (1972) MPLJ 921

**Hon'ble Judges:** G.P. Singh, J

**Bench:** Single Bench

**Advocate:** S.L. Seth, for the Appellant; C.P. Sen, for the Respondent

**Final Decision:** Allowed

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**Judgement**

G.P. Singh, J.

This is plaintiffs" second appeal. The relationship of the parties will appear from the following genealogical table :-

Rajaram who was son of Girdhari died on the 11th November 1918, leaving behind his widow, Mst. Pyaribahu. Girdhari died on the 16th November 1913 leaving behind his widow Nonibahu. Noni Babu died sometime in 1926. Thereafter, the properties belonging to Girdhari came in possession of his daughter-in-law Pyaribahu. In 1928, a civil suit was filed by Phundi for recovery of the properties left by Girdhari on the ground that Pyaribahu was not an heir and Phundi was entitled to succeed under the Hindu Law as then in force. The suit ended in a compromise; half of the properties were given to Phundi, and Pyaribahu was allowed to continue in possession of the other half under the conditions mentioned in the compromise, which is Ex. P-6. Pyaribahu was to have a life estate in the properties including lands that were allowed to remain in her possession. Phundi died leaving behind Imrat and Dulichand. On the 27th April 1963, Pyaribahu sold all the lands that were allowed to remain in her possession under the compromise, Ex. P-6, in favour of one

Maniram, for a sum of Rs. 4,000/-- On 28th November 1963, Imrat and Dulichand commenced the suit which has given rise to this appeal, against Pyaribahu and Maniram, for a declaration that the sale was ineffective against their interest and will not be operative after the death of Pyaribahu. The trial Court dismissed the suit and that decree was confirmed in appeal by the 1st Additional District Judge, Sagar. The plaintiffs have, therefore, come up in second appeal.

The learned Additional District Judge first held that the compromise entered in the suit of 1928 did not confer upon the widow a restricted estate, and therefore, the entire basis of the suit was absent. In my opinion, this construction placed upon the compromise is entirely erroneous. The compromise that was entered into in the earlier suit is Ex. P-6, and at the foot of this document, after the list of lands, it is entered as follows : -

Out of the lands, the defendant has given half to the plaintiff and has retained half in her possession for life.

The suit was decided in accordance with the compromise and a decree was passed in terms thereof. Although the judgment and decree did not clearly refer that the lands that were left with Pyaribahu were only for her life, in my opinion, the judgment and decree must be construed in the light of the compromise which was entered into by the parties. A compromise decree is nothing but the compromise itself to which a Court has to put its approval, and given the form of a decree. As in the compromise, Pyaribahu was permitted to retain the lands only for her life, it is clear that she was given only a limited estate, and the judgment and decree must also be construed accordingly.

The next question is, whether the Courts below were right in holding that Pyaribahu became a full owner of the lands in her possession u/s 14 of the Hindu Succession Act, 1956. According to the learned counsel for the appellants, sub-section (2) of section 14 was applicable and Pyaribahu did not become a full owner. The learned counsel for the respondents on the other hand contends that the case was governed by sub-section (1) and Pyaribahu became a full owner.

It must be recalled that Pyaribahu was a predeceased son's widow, and was not an heir to the estate of Girdhari. She had, no doubt, a right to be maintained out of the income of the lands, but she had no interest of an owner in the lands. The position of such a widow, who had not acquired any interest under the Hindu Women's Right to Property Act, 1937, was described in [Shrimati Rani Bai Vs. Shri Yadunandan Ram and Another](#), at p. 1122 as follows: -

The appellant was further entitled to remain in possession if she could establish that she had entered into possession by virtue of her claim or right to maintenance until the person laying a claim to the estate of Jangi Jogi made some proper arrangement for the payment of maintenance of her.

The aforesaid observations pre-suppose that the interest of such a widow was not an interest in the nature of ownership in the lands, otherwise she could not be deprived of her possession, as contemplated by their Lordships after some proper arrangement was made for payment of maintenance.

Section 14 of the Hindu Succession Act has been construed by the Supreme Court in a number of cases. The case which is relevant for the purposes of the present appeal is [Seth Badri Prasad Vs. Srimati Kanso Devi](#), where it was held that sub-section (2) of section 14 could come into operation only if acquisition in any of the methods indicated therein is made for the first time without there being any pre-existing right. In Badri Prasad's case a Hindu female had acquired an interest in the joint properties under the Hindu Women's Rights to Property Act, 1937. Later there was a partition by an award which mentioned that the widow had a limited estate in the properties allotted to her. On these facts it was held that the case was not covered by sub-section (2), but by sub-section (1), as the widow was in possession of the estate having acquired it under the Hindu Women's Rights to Property Act, 1937 and the award had merely recognised a pre-existing right. The actual decision in Badri Prasad's case is distinguishable because the widow that was concerned in that case had acquired an interest in the estate of her husband under the Hindu Women's Rights to Property Act, 1937, whereas Pyaribahu in the instant case, did not get any interest under that Act as her husband had died in 1918, before the Act was enacted. The only point of importance that emerges from Badri Prasad's case is that if a widow's case can fall under sub-section (1) of section 14, it will be immaterial if there is subsequently some instrument under which the pre-existing right of the widow is recognised and given effect to.

Now what is the nature of the pre-existing right which can bring the case of a Hindu female within sub-section (1)? The sub-section speaks of "any property possessed by a female Hindu whether acquired before or after the commencement of the Act". The right must be therefore in the nature of property and not a mere right of possession. It must be such a right which before the commencement of the Act had the effect of making the female Hindu a limited owner for it is the limited ownership of the Hindu female which is expanded by sub-section (1) into full ownership. This is the import of the words "shall be held by her as a full owner thereof and not as a limited owner." The sub-section does not aim at depriving persons of their property and conferring the same on the female Hindu who may have been in possession of the same; the sub-section merely enlarges a limited estate of a female, in which no one during her life-time has any interest, into an absolute estate. The explanation to sub-section (1) must also be understood in the same sense. The property to which the reference is made in the sub-section as also in the explanation is the property "properly acquired" by a female Hindu. In my opinion, mere right to possession acquired in the property belonging to someone else is not property acquired to which the sub-section or the explanation is attracted.

Reverting to the facts of the instant case, the estate of Girdhari after his widow's death devolved on Phundi and thereafter on the plaintiffs. Pyaribahu being a predeceased son's widow of Girdhari did not succeed to the estate. Although she was in possession of the lands for her maintenance, the lands were not "property acquired" by her but were property belonging to and vesting in Phundi. Property in the lands was acquired by Pyaribahu only when by the compromise and the decree passed, the lands were left with her for life. The compromise here was itself the source of acquisition of property there being no pre-existing right in the nature of ownership in the lands. The compromise and the decree passed upon it gave Pyaribahu only a limited estate and her case, therefore, fell under sub-section (2) of section 14 and the limited estate held by her was not enlarged into full ownership.

Reference in this connection may be made to the case of [Likhmi Chand and Others Vs. Smt. Sukhdevi and Others](#). In that case it was held that a female Hindu who is in possession of family property in exercise of her right of maintenance and residence, has no interest in the property and if by a subsequent agreement the properties are allotted to her for her life, the case falls u/s 14(2), and the widow continues to have a restricted estate. There is a conflict of opinion on the point and the relevant cases are referred to in Likhmi Chand's case. For the reasons I have already stated, I am in agreement with the view expressed by the Rajasthan High Court in Likhmi Chand's case.

In view of my conclusion that the interest of Pyaribahu was restricted by the compromise and that restriction continued even after the enactment of the Hindu Succession Act, the logical inference is that she had no power to transfer the lands beyond her life time so as to bind the next reversionary. The plaintiffs are, therefore, entitled to succeed in the suit and to get a declaration that the sale made by Pyaribahu in favour of the second defendant would not be binding on them after Pyaribahu's death.

No other point to support the judgments of the Courts below was argued before me.

The appeal is allowed ; the judgments and decrees passed by the Courts below are set aside. The plaintiffs' suit is decreed to this effect that the sale made by Smt. Pyari Bahu in favour of the second defendant shall not be binding on the plaintiffs after Pyari Bahu's death. In the circumstances of this case, the parties shall bear their own costs throughout.