(1990) 02 AP CK 0001

Andhra Pradesh High Court

Case No: Letters Patent Appeal No. 101 of 1980

Kota Varaprasada Rao and another	APPELLANT
Vs	
Kota China Venkaiah and others	RESPONDENT

Date of Decision: Feb. 17, 1990

Acts Referred:

- Hindu Adoptions and Maintenance Act, 1956 - Section 21, 22
- Hindu Succession Act, 1956 - Section 14(1)

Citation: AIR 1992 AP 1

Hon'ble Judges: Jeevan Reddy, J; Bhaskar Rao, J

Bench: Division Bench

Advocate: P.L. Narasimha Sarma, for the Appellant; P.V. Seshaiah, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Bhaskar Rao, J.

1. In this Letters Patent Appeal the important questions that arise for our decision are:

(i) whether a destitute widowed daughter has a right of maintenance against her brothers after the death of her father when she could not get sufficient provision from her deceased husband''s family for her maintenance, and

(ii) whether the property given to her for her maintenance for lifetime becomes an absolute estate u/s I4(1) or the limited interest does not enlarge and continues to be restricted estate u/s 14(2) of the Hindu Succession Act.

2. The material facts relevant for our present purpose are: Late Kota Ramayya had four sons, viz. (i) Venkata Subbayya, (ii) Raghavayya, (iii) China Venkayya (plaintiff) and (iv) Anjayya, and two daughters, viz. (i) Venkatasubbamma and (ii) Adi

Lakshmam-ma. Adi Lakshmamma, the younger sister of the plaintiff, lost her husband at an younger age even before she joined her husband and she has no property from her husband''s or father-in-law''s side to depend upon for her. maintenance. Therefore, from the time of her widowhood she was living with her father and after his death with the brothers. The four brothers on 1-4-1939 entered into a partition agreement under Ex. A-6 and at about that time the suit property was given to Adi Lakshmamma to be enjoyed for her lifetime and possession was also delivered to her agreeing to execute a formal settlement deed in her favour. Accordingly on 21-7-1940 the four brothers executed the registered settlement deed, Ex.B-1, the material portion of which reads:

"You are our sister. Your husband died long time back. As you have no source of living, you are being maintained by us. At the time we have decided to devide our proper ties, we have handed over to you possession of the house on 1-4-1939 with a view to enable you to lease out the house and live on the income arising therefrom for your life and to be responsible for making the necessary re pairs to the house and pay the revenue and municipal taxes payable thereon."

On 22-7-1940 the brothers also executed a registered partition deed, Ex.A-1, wherein after making a reference to this settlement under Ex.B-1, it is stated that the suit house settled shall be the joint family property of the brothers after the lifetime of Adi Lakshmamma.

3. It is, thus, critciai to notice that the setllement deed, Ex.B-1, is one executed in 1940 prior to the coming into force of the Hindu Adoptions and Maintenance Act, 1956; and it is only in view of this the question of liability of the brothers to maintain their destitute widowed sister, as framed supra, has arisen for our decision. The need for making reference to the date of settlement deed, we should clarify, is that had it been subsequent to the coming into force of the Hindu Adoptions and Maintenance Act, 1956, Section 22 thereof would have clinched the issue.

4. Now, reverting back to the facts, it is during 1973 Adi Lakshmamma executed Ex.B-4 will assenting absolute rights under the Hindu Succession Act, 1956 and bequeathed the suit property to defendants 1 and 2 sons of her brothers Venkata Subbayya and Raghayaiah respectively. Subsequently on 1-4-1974 Adi Lakshmamma died. Thereafter, China Venkayya one of the brothers filed the suit for partition and - separate possession of the suit house. The trial Court holding that the life-estate in the suit property settled under Ex.B-1 has enlarged into an absolute one under S. 14(1) of the Hindu Succession Act, 1956 and that even otherwise also Ex. A-6 partition agreement in pursuance of which she was put in possession of the suit property did not provide for any prohibition against alienation, and that therefore the will Ex.B-4 was valid and binding on the plaintiff (sic), dismissed the suit. In the appeal preferred against that decree and judgment of the trial Court, the learned single Judge found that by the date of Ex, A-6 Adi Lakshmamma was married and therefore had no legal or moral right to be maintained by her brothers, that she had

no existing right against thejoint family properties and that the life-estate would not enlarge into absolute one u/s 14(1) of the Hindu Succession Act. Accordingly, the learned Judge having held that the suit property reverts back to the brothers after the death of Adi Lakshmamma, decreed the suit. Hence this L.P.A., by the defendants.

5. The learned counsel, Mr. P. L. N. Sarma, appearing for the appellants submitted that the suit house was given to Adi Lakshmamma in lieu of her maintenance, a pre-existing right, since she was an issueless destitute widow having no property to depend upon from her husband''s or father-in-law''s side. It is submitted that even before Adi Lakshmamma joined her husband after her marriage he died, and therefore Adi Lakshmamma was with her father and was being maintained by him in discharge of his moral obligation; and after his death the moral obligation ripened into a legal one to maintain Adi Lakshmamma for the plaintiff and his brothers and it is in lieu of this right of maintenance the property was settled on her.

6. Mr. P. V. Seshaiah, the learned counsel for the plaintiff-respondents submitted that Adi Lakshmamma having been married and also widowed, there was neither moral obligation for the father nor legal obligation for the brothers to provide for her maintenance and that the suit house was given to her out of sympathy to provide maintenance for her lifetime; and that she had no pre-existing right as such for her maintenance against the father or brothers.

7. The question therefore is, whether Adi Lakshmamma had a pre-existing right for her maintenance against the father during his life time and against the brothers after his death. The admitted facts are that Adi Lakshmamma was an issueless destitute widow and that she did not have any property to depend upon for her maintenance from her husband''s or father-in-law''s side and that right from the time of her widowhood she was maintained by her father. Therefore, whether she had any right of maintenance against the father does not in fact arise since as per the facts she was maintained by her father. The simple question thus remains is whether she had a right of maintenance in law against her brothers.

8. The oldest case decided on the subject is one in Khetramani Dasi v. Kashinath Das (1868) 2 CA LR 15. There, the father-in-law was sued by a Hindu widow for maintenance. Deciding the right of the widow for maintenance, the Calcutta High Court referred to the Shastric law as under:

"The duty of maintaining one''s family is, however, ciearly laid down in the Dayabhaga, Chapter II, Section XXIII, in these words:

''The maintenance of the family is an indispensable obligation, as Manu positively declares.''

Sir Thomas Strange in his work on Hindu Law Vol. I page 67, says:

''Maintenance by a man of his dependants is, with the Hindus, a primary duty. They hold that he must be just, before he is generous, his charity beginning at home; and that even sacrifice is mockery, if to the injury of those whom he is bound to maintain. Nor of his duty in this respect are his children the only objects, co-extensive as it is with the family whatever be its composition, as consisting of other relations and connexions, including (it may be) illegitimate offspring. It extends according to Manu and Yajnavalkya to the outcast, if not to the adulterous wife; not to mention such as are excluded from the inheritance, whether through their fault, or their misfortune; all being entitled to be maintained with food and raiment."

At page 21, the learned Judges have also referred to a situation where there is nothing absolutely for the Hindu widow to maintain herself from the parents-in-law''s branch by referring to the following texts from NARADA:

"In Book IV, Chapter I Section I, Art. XIII of Celebrooke''s Digest, are the following texts from NARADA:

''After the death of her husband, the nearest kinsman on his side has authority over a woman who has no son; in regard to the expenditurte of wealth, the government of herself, and her maintenance, he has full dominion. If the husband''s family be extinct, or the kinsman be unmanly, or destitute of means to support her, or if there is no Sapindas, a kinsman on the father''s side shall have authority over the woman; and the comment on this passage is : ""Kinsman on the husband''s side; of his father''s or mother''s race in the order of proximity. ''Maintenance'' means subsistence. Thus, without his consent, she may not give away anything to any person, nor indulge herself in matters of shape, taste, small, or the like, and if the means of subsistence be wanting he must provide her maintenance. But if the kinsman be unmanly (defecient in manly capacity to discriminate right from wrong) or destitute of means to support her, if there be no such person able to provide the means of subsistence, or if there be no SAPINDAS, then any how, determining from her own judgment on the means of preserving life and duty, let her announce her affinity in this mode : ''I am the wife of such a man''s uncle; ''and if that be ineffectual, let her revert to her father''s kindred; or in failure of this, recourse may be had even to her mother''s kindered" (Empha-sis supplied.)
In Book III, Chapter II, Section II, Art. CXXII, of Colebrooke''s Digest, we have the following texts and comments:

"She who is deprived of her husband should not reside apart from her father, mother, son, or brother, from her husband''s father or mother, or from her maternal uncle; else she becomes infamous.""

As per the above texts and comments, a Hindu widow if the parents-in-law''s branch is unmanly or destitute of means to support her is entitled to be with the father or the kinsman on the father''s side.

9. In Janki v. Nand Ram (1889) ILR 11 All 194, a Hindu widow after the death of her father-in-law sued her brother-in-law and her father-in-law''s widow. The Full Bench of the Allahabad High Court held that the father-in-law was under a moral, though not legal, obligation not only to maintain his widowed daughter-in-law during his life time, but also to make provision out of his self-acquired property for her maintenance after his death; and that such moral obligation in the father became by reason of his self-acquired property having come by inheritance into the hands of his surviving son, a legal obligation enforceable by a suit against the son and against the property in question. While so deciding, the learned Judges at page 210 made a reference to a passage from Dr. Gurudas Banerjee''s Tagore Law Lectures, thus:

"We have hitherto been considering the claim of a widow for maintenance against the person inheriting her husband''s estate. The questio''n next arises how far she is entitled to be maintained by the heir when her husband leaves no property and how far she can claim maintenance from other relatives. The Hindu sages emphatically enjoin upon every person the duty of maintaining the dependant members of his family. The following are a few of the many texts on the subject:--

MANU: ''The ample support of those who are entitled to maintenance is rewarded with bliss in heaven; but hell is the portion of that man whose family is afflicted with pain by his neglect: therefore let him maintain his family with the utmost care.''

NARADA: ''Even they who are born, or yet unborn and they who exist in the womb, require funds for subsistence; deprivation of the means of subsistence is reprehended.''

BRIHASPATI: ''A man may give what remains after the food and clothing of his family, the giver of more who leaves his family naked and unfed, may taste honey at first, but still afterwards find it poison.''"

The text of MANU as added reads:

"He who bestows gifts on strangers, with a view to worldly fame, while he suffers his family to live in distress, though he has power to support them, touches his lips with honey, but swallows poison; such virtue is counterfeit: even what he does for the sake of his future spiritual body, to the injury of those whom he is found to maintain, shall bring him ultimate misery both in this life and in the next."

Having so quoted the texts, the Full Bench based its judgment on the proposition:

".....under the Hindu law purely moral obligations imposed by religious precepts upon the father ripen into legally enforceable obligations as against the son who inherits his father''s property."

10. In Kamini Dassee v. Chandra Pode Handle, (1890) ILR 17 Cal 373, it is held by the Calcutta High Court that the principle that an heir succeeding to the property takes

it for the spiritual benefit of the late proprietor, and is, therefore, under a legal obligation to maintain persons whom the late proprietor was morally bound to support, has ample basis in the Hindu law of the Bengal School and accordingly decreed the suit for maintenance laid by a widowed brother against her husband''s brothers.

11. In Devi Prasad v. Gunvati Koer (1894) ILR 22 Cal 410, deciding an action brought for maintenance by a Hindu widow against the brothers and nephew of her deceased husband after the death of her father-in-law, the Calcutta High Court held that the plaintiff''s husband had a vested interest in the ancestral property, and could have, even during his father''s life time, enforced partition of that property, and as the Hindu law provides that the surviving coparceners should maintain the widow of a deceased coparcener, the plaintiff was entitled to maintenance.

12. In Bai Mangal v. Bai Rukmini (1899) ILR 23 Bom 291, the statement of law of MAYNE that

"After marriage, her (meaning the daughter''s) maintenance is a charge upon her husband''s family, but if they are unable to support her, she must be provided for by the., family of her father."

was understood to have been one of monetary character than laying down any general legal obligation. The learned Judge, Ranede, J., after examining all the authorities has broadly laid down the law, as he understood, thus:

"In fact, all the text writers appear to be in agreement on this point, namely, that it is only the unmarried daughters who have a legal claim for maintenance from the husband''s family. If this provision fails, and the widowed daughter returns to live with her father or brother, there is a moral and social obligation, but not a legally enforceable right by which her maintenance can be claimed as a charge on her father''s estate in the hands of his heirs." (page 295).

13. However, the same learned Judge, Ranede, J., in a later case in Yamuna Bai v. Manubai 1899) ILR 23 Bom 608, expressed his absolute concurrence with the law laid down by the Allahabad High Court in Janaki''s case, (1889 ILR 11 All 194) (supra), as regards the right of the widow of a predeceased son to maintenance against the estate of the deceased father-in-law in the hands of his heirs.

14. The view of Ranede, J., in Bai Man-gal''s case(1899 ILR 23 Bom 291) (supra), was further conditioned by Ammer Ali, J., in Mokhoda Dassee v. Nundo Lall Haldar (1900) ILR 27 Cal 555, by holding that the right of maintenance is again subject to the satisfaction of the fact that the widowed sonless daughter must have been at the time of her father''s death maintained by him as a dependant member of the family.

15. But, both the views of Ranede, J., in Bai Mangal''s case (1899 ILR 23 Bom 291) (supra), and Ameer Ali, J., in Mokhode Dassee''s case, (1900 ILR 27 Cal 555) (supra), did not find acceptance of A. K. Sinha, J., of the Calcutta High Court in Khanta Moni

Saha Vs. Shyam Chand Pramanick (Saha), . The learned Judge held that a widowed daughter to sustain her claim for maintenance need not be a destitute nor need be actually maintained by the father during his life time... All that she is required to prove to get such maintenance, the learned Judge held, is that at the material time she is a destitute and she could not get any maintenance from her husband''s family,

16. The next important case on the subject is that of the Madras High Court in Gudimetla Venkatarazu Vs. Bollozu Kotayya, . In this view of Ranede, J., in Bai Mangal''s case (1899 ILR 23 Bom 291) (supra) was dissented from by holding that there is a legal obligation on the father and his family to support a destitute daughter (though she had been married away) if she could not get sufficient provision from her deceased husband''s family for her maintenance. The learned Judge, Sadasiva Aiyar, J., also noted that according to Bhattacharya under the Hindu Law Texts widowed daughters are entitled to maintenance and

''justice requires that their right should be recognised''.

Referring to the argument that ''by marriage she becomes member of another family and becomes so to say, "dead" to her own family, the learned Judge held, is merely carrying legal fictions to absurd lengths. The learned Judge illustrated this absurdity thus:

"A wife is half her husband''s body but you cannot on that ground give double rations to the husband for his meals and give none to the wife; nor does the daughter lose her consan-guineness, blood relationship to her father and her right of inheritance to him and other similar rights, simply because she becomes attached by Pinda, Gotra and Sootake to her husband''s family by marriage."

Adverting to the question, namely

''has not a widowed destitute daughter whose husband''s family is unable to give her anything has she not a legal claim on her father for her maintenance atleast when she lives with him as a member of his family? Has she not, at least, a social and moral claim against her father which ripens into a legal right against his estate after his death just as in the case of a daughter-in-law who has only a social and moral claim against her father-in-law if he has no ancestral property and whose moral claim becomes a legal claim after his death?''

the learned Judge, Sadasiva Aiyar, J., observed:

"The authorities are all in favour of the existence of such a right in the destitute married daughter except one doubtful decision in Bai Mangal v. Bai Rukhmini 1899 ILR 23 Bom 291, J. C. Ghose says (Hindu Law pages 295 and 296) "The law of Narada is clear, that when the husband''s family is in destitute circumstances, the father''s family has to maintain a female. It is difficult to see how it is only a moral duty. .. .. When the father''s family marry a girl to a poor man... how can it be said that when

she becomes helpless on account of the indigence of the husband''s family the father''s family can turn her out without a maintenance?.... According to the strict letter of the Hindu Law and also according to the nature of the Constitution of Hindu Society, it is a clear legal duty on the part of the father''s family to maintain a woman under the circumstances noted above."

17. In Mt. Bholi Bai v. Dwarka Das AIR 1925 Lah 32, the Lahore High Court held that the sister is entitled to maintenance against the properties of her deceased father in the hands of her brother.

18. The decision of the Full Bench of the Madras High Court in Ambu Bai Ammal Vs. Soni Bai Ammal, , has a considered bearing on the present question. That is a case where the daughter filed a suit against her step-mother for her maintenance from out of the property of her father inherited by her step-mother, on the ground that she is a widow with no means and that her husband''s family is unable to support her. Considering the claim the Full Bench examined whether the principle laid down in Janki v. Nand Ram''s case (1889 ILR 11 All 194) (supra) of the Allahabad High Court could be extended to the case of a widowed daughter, who has no means of subsistence. While so examining, it recalled that the Allahabad High Court held that the father was under a moral, though not a legal, obligation to maintain his widowed daughter-in-law during his life time and to make provision out of his self-acquired property for her maintenance after his death. This moral obligation becomes legal one by reason of the fact that the son inherits the property. The basis for this change of character into legal one was that the son took the estate, not for his own benefit but for the spiritual benefit of his father as has been stated in Khetramani Dasi''s case (1868 2 CA LR 15) (supra). The Full Bench also referred to two cases reported by Strange (1830 Edition pages 83 and 90) and one case in Macnaghten (Vol. II pp. 117 and 118).
In one of the two cases reported by Strange:

A Hindu left two widows, a widowed sister who had lived with him after the death of her husband, and his mother. The question was to whom should his estate go. The answer given was that the mother must be maintained and so must be the sister, if left destitute by her husband.

In the second case:

A Hindu left two wives, his mother and sister. The answer was that the mother of the deceased Hindu, being otherwise unprovided for, sufficient allowance must be set apart from his estate for her maintenance, and if the deceased''s sister derived nothing from her husband, the widows should jointly contribute towards her support.

In the case reported in Macnaghten:

The deceased left two sons by one wife (who died before him), and a widow and her two daughters. Subsequent to his death, one of the two sons died. There thus were (i) a son of his first wife, (ii) a widow and (iii) two daughters of the widow. The question there was if the widow received no portion of the property from her step-son, whether she is entitled to any share in the estate. The answer was that the widow was entitled to maintenance from her step-son; and if her two daughters have not been disposed of in marriage, they will also have some share of their father''s wealth to defray their nuptial expenses. Should they, after marriage, be in want of maintenance, in consequence of their husband''s inability to support them, they must be provided with food and raiment by their half-brother. This is conformable to Dayabhaga and other authorities.

If the sister of a deceased Hindu is entitled to maintenance from out of his estate, the Full Bench held, it is impossible to imagine on what principle maintenance can be denied to his daughter. Having also referred to the decision of Sadastva Aiyar, J., in Gudimetla Venkatarazu Vs. Bollozu Kotayya, , the Full Bench found no difficulty in extending the principle embodied in Janki v. Nand Ram''s case (1889 ILR 11 All 194) (supra) to the case of a daughter. The Full Bench accordingly concluded that a Hindu widow is bound to maintain out of her husband''s estate her husband''s widowed daughter when the daughter is without means and her husband''s family is unable to support her.

19. In Appavu Udayan v. Nallamrnal AIR 1949 Mad 24, the Madras High Court has to deal with the rights of daughter-in-law against her father-in-law and his estate in the hands of his heirs. There it is held that the father-in-law is under a moral obligation to maintain his widowed daughter-in-law out of his self-acquired property and that on his death if his self-acquired property descends by inheritance to his heirs, the moral liability of the father-in-law ripens into a legal one against his heirs.

20. A Full Bench of this High Court in T.A. Lakshmi Narasamba Vs. T. Sundaramma and Others, held;

"The moral obligation of a father-in-law possessed of separate or self-acquired property to maintain the widowed daughter-in-law ripens into a legal obligation in the hands of persons to whom he has either bequeathed or made a gift of his property.

Under the Hindu law there is a moral obligation on the father-in-law to maintain the daughter-in-law and the heirs who inherit the property are liable to maintain the dependants. It is the duty of the Hindu heirs to provide for the bodily and mental or spiritual needs of their immediate and nearer ancestors to relieve them from bodily and mental discomfort and to protect their souls from the consequences of sin. They should maintain the dependants pf the persons of property they succeeded. Merely because the property is transferred by gift or by will in favour of the heirs the obligation is not extinct. When there is property in the hands of the heirs belonging

to the deceased who had a moral duty to provide maintenance, it becomes a legal duty on the heirs. It makes no difference whether the property is received either by way of succession or by way of gift or will, the principle being common in either case."

21. It is rather pertinent to notice here that the view of Ranede, J., in Bai Mangal''s case (1899 ILR 23 Bom 291) (supra) has been dissented from specifically by the Full Bench of this High Court.

22. We must before proceeding further mention that we have been conscious that the case law mostly referred to above relates to matters pertaining to the rights of the daughter-in-law against her father-in-law and his estate. The reason, still, for their reference is the unusual paucity of case-law governing the rights of daughter against her father, brothers, etc.''for her maintenance. This scantiness of case law is more due to the devotional character and spiritual belief of the Hindu population and also due to the fact that the law-abiding nature of the Hindus have precluded brothers from disputing the right of maintenance of their widowed sister. More over, the analogy in the case-law with reference to the daughter-in-law can be and in fact has been also extended to the destitute widowed daughter by the Full Bench of the Madras High Court in Ambu Bai Ammal Vs. Soni Bai Ammal, .

It is also interesting to note that MANU says:

"The support of the group of persons who should be maintained is the approved means of attaining heaven, but hell is the man''s portion if they suffer; therefore, he should carefully maintain them.'' (Cited in DAYABHAGA, II, 23)

MANU goes on to describe the group of persons to be maintained:

"The father, the mother, the Guru, a wife, an off-spring, poor dependents a guest and a religious mendicant are declared to be the group of persons who are to be maintained" (cited in Sri Krishna''s commentary on the DAYABHAGA.)

MANU further says:

"A father is bound to maintain his unmarried daughters. On the death of the father they are entitled to be maintained out of his estate. A daughter on marriage ceases to be a member of her father''s family, and becomes a member of her husband''s family..... If she is unable to obtain maintenance from her husband, or after his death from his family, her father, if he has got separate of his own, is under a moral, though not a legal, obligation to maintain her."

(MULLA''s Principles of Hindu Law, 9th Edn. p. 584).

23. KAMALAKARA, as cited by Dr. Jolly, in his VIVADATANDAVA says:

"It is incumbent on the sons and grandsons to maintain indigent widows and daughter-in-law though no wealth of the father may be in existence."

According to him :

"In reality the claim of the female family members of maintenance does not become extinct either through the absence of assets, or in the somewhat analogous case of a separation of the coparceners having taken place."

24. Even GHOSE states that a female is entitled to be maintained by her father''s family, if her husband''s family is extinct, or incapable on account of extreme poverty, to support her. (Principles of Hindu Law, 10th Edn. page 305).

25. Again according to MEDHATITHI as cited by GHOSE at page 310, the sonless widowed daughter and grand-daughter and sister come back to the family of the father. MEDHATITHI''s work as observed by M A YNE is the earliest commentary extant on MANU and is frequently referred to as of high authority.

26. SIRCAR expresses the opinion that a married daughter is ordinarily to be maintained in her husband''s family, but if they are unable to maintain her, she is entitled to be maintained in her father''s family. (8th Edn. p. 534).

27. In view of the different texts cited and the case-law noted, we hold that a destitute widowed daughter has a right of maintenance against her brothers after the death of her father when she could not get sufficient provision from her deceased husband''s family for her maintenance.

28. It is now contended by Mr. PLN Sarma that the suit property given to Adi Lakshmamma in lieu of her maintenance -- a pre-existing right -- though for life-estate matures into an absolute-character by virtue of Section 14(1) of the Hindu Succession Act. Mr. P. V. Seshaiah, on the other hand, contended that the suit property settled was out of sympathy for her maintenance and not by virtue of a pre-existing right and therefore Section 14(1) does not work in and it is Section 14(2) that operates so as to uphold the restricted estate.

29. We have already held on point No. 1 that the daughter, Adi Lakshmamma, had a pre-existing right against her brothers for her maintenance and admittedly the suit property was settled in her favour, though for life-estate, for her maintenance as she could get nothing for dependance from her husband''s family.

30. Since the basis for deciding the question is the interpretation of sub-sections (1) and (2) of Section 14 of the Hindu Succession Act, 1956 it would be convenient to setout the provision thus:

"14. (1) Any properly 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 by gift from any person, whether a relative or not, before, at

or after her marriage.....

(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".

31. The Supreme Court in V. Tulasamma v. V. Sesha Redd AIR 1977 SC 1944, had the occasion to interpret the above provision. The Supreme Court summarising the legal conclusions after an exhaustive consideration of the authorities on the question of law as to the interpretation of Section 14(1) and (2) of the Act, stated thus (at pp. 1977-78 of AIR):

"(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.....

(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.

(3) Sub-section (2) of S. 14 is in the nature of a proviso and has a field of its own without interfering with the operation of S. 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 S. 14(1) or in a way so as to become totally inconsistent with the main provision.

(4) Sub-section (2) of S. 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 the female is legally permissible, and S. 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 to 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 S. 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-s. (2) and would be governed by S. 14(1) despite any restrictions placed on the powers of the transferee.

(6) The words "possessed by" used by the Legislature in S. 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....

(7) That the words "restricted estate" used in S. 14(2) are wider than limited interest as indicated in S. 14(1) and they include not only limited interest but also any other kind of limitation that may be placed on the transferee."

In the instant case, the settlement deed, Ex. B-l, specifically states that the brother --executants have handed over to Adi Laksh-mamma possession of the suit house on 1-4-1939 with a view to enable her to lease-out the house and live on the income arising therefrom, since she had no source of living and was being maintained by them. Thus, the statement of the suit property on Adi Lakshmamma was in lieu of her maintenance and to enable her to live on the lease-hold income from the said property. Thus, the property having been settled in lieu of her maintenance, the instrument (Ex. B- 1) is to be taken out of the ambit of S, 14(2) and would be governed by S. 14(1) despite the restriction of life-estate on the powers of Adi Lakshmamma.

32. The decision of the Punjab and Harayana High Court in Ram Sarup and Others Vs. Patto and Others, is also to the effect that S. 14(2), being in the nature of a proviso to S. 14(1), comes 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 the female Hindu who is in possession of the property.

33. A Division Bench of this High Court in C. Buchaiah v. D. Venkata Subbaiah (1985) 3 APLJ 238 has followed the decision of the Supreme Court in Tulasamma''s case (AIR 1977 SC 1944) (supra).

34. The Supreme Court in Gulwant Kaur and Another Vs. Mohinder Singh and Others, again held (at p. 2256 of AIR):

"If a female Hindu is put in ppssession of property pursuant to or in recognition of a right to maintenance, it cannot be denied that she has acquired a limited right or interest in the property and once that position is accepted, it follows that the right gets enlarged to a full ownership u/S. 14(1) of the Act."

35. The decision of the Supreme Court in Kothi Satyanarayana Vs. Galla Sithayya and Others, wherein the instrument is construed to be one governed by S. 14(2) is distinguishable on facts since there the instrument was the result of a mediation with specific and settled agreed terms and was not the outcome of any pre-existing right of the widow and therefore, that is of no help to the present case.

36. The other decision of the Supreme Court in G. Appaswami Chettiar and Another Vs. R. Sarangapani Chettiar and Others, wherein S. 14(2) was held to be applicable was one where the acquisition of property was under a will prescribing a restricted estate and not on account of any pre-existing right.

37. So much so, the decision of this Court in Somthim Veerabhadra Rao and Another Vs. Duggirala Lakshmi Devi, is not only rendered prior to the decision of the Supreme Court in Tulsamma''s case (AIR 1977 SC 1944) (supra), but also one where the female Hindu did not have any independent or pre-existing right to the property and therefore that is of no help to the plaintiff-respondent.

38. We accordingly hold that the suit property given to Adi Lakshmamma under Ex. B-l for her maintenance for life time enlarges into an absolute-estate under sub-sec. (1) of S. 14 of the Hindu Succession Act.

39. Mr. P. V. Seshaiah, contended that the cases decided and referred to supra that there is a pre-existing right in the daughter against the father and his properties for her maintenance are all with reference to Bengal School (Dayabhagha) and therefore not applicable to the Mitakshara school of Hindu law. We must say that similar is the argument before the Allahabad High Court in Janki''s case (1889 ILR 11 All 194 (supra) where the argument was sought to have been supported by what Mr. Mayne says in S. 433 of his work:

"When we go to a stage back to the Mitakshara, and still more to the actual usage of those districts where Brahminical influence was less felt, the whole doctrine of religious efficacy seems to disappear."

The learned Judge, Mahmood, J. adverting to the statement felt that the sentence was rather unguardedly expressed and observed :

"The Mitakshara and the Bengal school do not differ with each other in the principle that the right of inheritance itself is based on and arises from the contemplation of the Hindu Law that the inheritor by taking the inheritance renders spiritual benefits to the soul of the deceased proprietor. The principle is common to all schools of Hindu law and the difference between the Banares school and the Bengal school on this point is a matter of detail relating to questions of preference where there is competition between various classes of heris."

In view of this, we are not able to find much force in this argument of Mr. Seshaiah.

40. It is lastly contended by Mr. Seshaiah that Adi Lakshmamma was not without means on the date of Ex. B-l or even prior thereto when the suit property was delivered to her since she was having about Rs. 2000/-in her katha of the joint family business. It is averred in the plaint:

"The joint family of the plaintiff and his brothers and father possessed properties both movable and immovable besides flourishing business. Ravuri Audilakshmamma youngest sister of the plaintiff lost her husband in her young age and she had no property to depend upon for her maintenance."

P.W. 1 deposed that Adi Lakshmamma was married in 1920 or some time earlier thereto. At the time of her marriage she was ''11'' years and her husband died one

or two years after the marriage and even prior to her joining the husband. She was therefore living in the joint family house with her brothers. From the pleadings and evidence it is clear that Adi Lakshmamma had no property to depend upon for her maintenance. It is the plea and also some evidence was adduced to show that Adi Lakshmamma was having about Rs. 2,000/- to her credit in the katha of the joint family business. But, the question is whether actually she was having the cash and credit or only the entry was merely shown to be so. As against this entry said to have been there, there stand documents, Exs. A-1, B-1 and A-6 to the contra besides the pleading extracted in the plaint. In all the three documents, Exs. A-l, B-l and A-6, it is specifically stated that Adi Lakshmamma had no source of income for herself and therefore the brothers decided to provide for her. It cannot also be ruled out that the entry relied upon was made for purposes of Income Tax. We, therefore, hold that Adi Lakshmamma did not have any source of living and had no property to depend upon for her maintenance at the crucial time.

41. Before parting with this, we would rather intend to express that the view we have taken herein as regards the pre-existing right of the daughter, a destitute widowed daughter, against the father and brothers for her maintenance by referring to the texts and precepts earlier to the codification of the law is absolutely in consonance with the intendment of the Legislature behind incorporating Section 22 of the Hindu Adoptions and Maintenance Act, 1956. Section 22 makes it mandatory for the heirs of a deceased Hindu to maintain the dependants, one such being the widowed daughter, of the deceased out of the estate inherited by them from the deceased. The Supreme Court also had the occasion to interpret Sections 21 and 22 of the Hindu Adoptions and Maintenance Act in Amireddi Rajagopala Rao and Others Vs. Amireddi Sitharamamma and Others, dealing with the rights of a concubine for maintenance from the estate of the deceased paramour. The Supreme Court while observing that if the rights of maintenance were acquired by her or illegitimate sons of the deceased, those rights are not affected by the provisions of Ss. 21 and 22 of the Act, held (at p. 1973 of AIR):

"Now, before the Act came into force, rights of maintenance out of the estate of a Hindu dying before the commencement of the Act were acquired and corresponding liability to pay the maintenance was incurred under the Hindu Law in force at the time of his death. It is well recognised rule that a statute should be interpreted, if possible so as to respect vested rights, and such a construction should never be adopted if the words are open to another construction. See Craies on Statute Law, 6th Edn., (1963) p. 397. We think that Ss. 21 and 22 read with S. 4 do not destroy or affect any right of maintenance out of the estate of a deceased Hindu vested on his death before the commencement of the Act under the Hindu Law in force at the time of his death."

We have also had in mind by this to express that the obligation of the father against the daughter for her maintenance, since not touched by the codified law, remains as

it is unaffected since nothing contra is stated in the Act.

42. In Me result,the decree and judgment under the appeal are set aside and those of the trial Court are restored by allowing the appeal. The suit accordingly stands dismissed. There shall, however, be no order as to costs.

43. Order accordingly.