

(1982) 12 CAL CK 0002

Calcutta High Court

Case No: A. O. D. No. 26 of 1968

Basudeb Biswas and Others

APPELLANT

Vs

Radhanath Maity and Others

RESPONDENT

Date of Decision: Dec. 24, 1982

Acts Referred:

- Hindu Succession Act, 1956 - Section 14, 14(1), 14(2)
- Transfer of Property Act, 1882 - Section 10, 11

Hon'ble Judges: P.K. Banerjee, J

Bench: Single Bench

Advocate: A.K. Sengupta, for the Appellant; Rabindra Nath Mittar and Subhas Bose, for the Respondent

Final Decision: Allowed

Judgement

P.K. Banerjee, J.

This appeal at the instance of the plaintiffs arises out of a suit for declaration of the plaintiff's title in the suit property and confirmation of possession therein and for injunction. The case of the plaintiffs was that the suit land formerly belonged to one Dharanldher Maity and he gave away the same to his second wife, Pusparani, by a registered deed of Nirupan Patra. Pusparani's name was duly recorded in the R.S. Khatian. Pusparani sold the suit land by registered Kobala on 11-5-61. The suit plot no 2129/2499 and 2129/2580 were previously Khas and both the plots have been converted into said lands by filling up with earth. The plot no. 2128 was also a Doba and converted into seli land. The defendants nos. 1 to 6 are the step-sons of Pusparani. It is alleged that the said defendants nos. 1 to 6 became angry as Pusparani executed Kobala in favour of the plaintiffs and the defendants were trying to threaten to dispossess the plaintiffs from the suit lands. Hence the suit was filed. The defendants nos. 1, 2, 4, and 5 contested the suit by filing a joint written statement. It is alleged that the plaintiffs have got no title in respect of the suit land. The story of Dharani Matty's transfer of the suit property to Pusparani by a

registered deed and the story of Pusparani's possession in the suit property are all false. The sale, by Pusparani to the plaintiffs was also denied to be false. It is stated that the said Kobala is fraudulent, collusive, without consideration and a mere paper transaction. It is alleged that Pusparani had no title or possession in the suit land at the time of execution of the said Kobala. Hence the plaintiffs did not acquire any title or possession by such Kobala. It is stated that the suit land along with other lands, belonged to the father of the defendants, late Dharanidhar Maity. He gave away his other property to defendants nos. 1 to 6 absolutely and the suit property was specified for the maintenance of Pushparani. In the said deed, there was a term that, Pushparani would enjoy the suit property living in her husband's house and after her death, the suit property would devolve on the defendants nos. 1 to 6 absolutely. There was also a term that, if Pushparani left her husband's house and began to live in some other place, her limited interest in the suit land would at once be extinguished. The defendant's father died in the year 1360 B. S. and thereafter in the year 1363 B.S. Pushparani left her husband's house and as such her limited interest was extinguished and the defendants nos. 1 to 6 were possessing the said land since then. Before I notice the arguments advanced by both the parties, it is convenient for me to consider the deed of Nirupan Patra, admittedly executed by the father of the defendants nos. 1 to 6 and the husband of the plaintiff's vendor. In the said Nirupan Patra it has been provided as follows:

In so far as Pushparani was concerned it has also been provided as follows:

2. The Court of first instance held that by Nirupan Patra, only the life interest was given and in view of section 14(2) of the Hindu Succession Act, the restriction contained therein was valid. The learned Additional District Judge, however, did not go into the question u/s 14 of the Hindu Succession Act but held agreeing with the learned Munsif that by leaving the husband's house the vendor of the plaintiff's stood divested of her right, title and interest given in the Ext. A, a portion of which has been quoted by me in my judgment. Being aggrieved by the said order, the plaintiffs preferred the present appeal.

3. Mr. Sengupta on behalf of the appellant contended that the Nirupan Patra itself gave the absolute right to the wife of the executor of the. Nirupan Patra. Any restriction, after absolute right given, comes within the mischief of sections 10 or 11 of the Transfer of Property Act and is void to that extent. Apart from that, it has been argued by Mr. Sengupta that the Nirupan Patra itself recognizes the existing right of the parties to the Nirupan Patra and therefore the Nirupan Patra itself proves the existing right or claim antecedent to the Nirupan Patra.

4. It is further argued by Mr. Sengupta that the widow got the limited interest at the time of the death of the husband. Assuming that by Nirupan Patra the wife had only a life estate, it is argued by Mr. Sengupta that section 14(2) of the Act has no application to the facts and circumstances of the case.

5. Mr. Rabindra Nath Mitter on behalf of the defendants, however, argued that the case comes within the four corners of section 14(2) of the Hindu Succession Act and not u/s 14(1) as argued by Mr. Sengupta. It is argued by Mr. Mitter that unless the wife has an antecedent right, section 14(1) of the Act cannot have any application whatsoever and therefore section 14(2) of the Hindu Succession Act in terms applies and u/s 14(2) of the Act the restriction Imposed on the Nirupan Patra comes within the mischief of terms, Gift, will or other instrument which prescribes in such property mentioned in section 14(2) of the Act. In the circumstances, therefore, by purchase the plaintiffs have not purchased anything because the plaintiffs' vendor had no right in respect of the property sold. Number of decisions have been referred to by both the parties which I shall deal with one by one.

6. The first decision u/s 14 of the Hindu Succession Act was reported in [Gummalapura Taggina Matada Kotturuswami Vs. Setra Veeravva and Others](#), . In the said decision, their Lordships of the Supreme Court held that thus the opening words "property possessed by a female Hindu" obviously mean that to come within the purview of the section the property must be in possession of the female concerned at the death of the commencement of the Act. That possession might have been either actual or constructive or in any form recognized by law, but unless the female Hindu, whose limited estate in the disputed property is claimed to have been transformed into absolute estate under this particular section, was at least in such possession, taking the word "possession" in the widest connotation, when the Act came into force, the section would not apply or in the other words unless the widow is in possession either actual or constructive or in any recognized by law, section 14(1) has no application. In the said case, A, the last male holder, died in 1920. A had by his will authorised his wife B to adopt a son and in compliance therewith B adopted C in 1942. D, alleging himself to be the nearest reversioner of A, filed a suit for declaration that C's adoption was invalid and not binding on him. The suit was dismissed and the decision was affirmed by the High Court On appeal to the Supreme Court the preliminary objection was raised under the Hindu Succession Act. It was held by the Supreme Court in the facts and circumstances that the possession of the property must be deemed to be possessed in law and the suit could not succeed.

7. In the case reported in [S.S. Munna Lal Vs. S.S. Rajkumar and Others](#), it was held by the Supreme Court that the share of a Jain widow, declared by a preliminary decree passed in a suit for partition of joint family property before the commencement of the Act, is a share "possessed" by her within the meaning of section 14 of the Act. By section 14(1) of the Act, the interest of a Hindu female which would have been regarded as a limited interest, was converted into an absolute interest. The explanation to section 14(1) also gave to the expression "property" the widest connotation, so as to include the share declared by a preliminary decree for partition in favor of a Hindu female. There Lordship of the Supreme Court held, interlaid, that the rule that till actual division of the share by partition of the joint

family estate, a Hindu female could not be recognized as owner could not apply after the enactment of the Hindu Succession Act which superseded the rules of Hindu Law in all matters expressly provided for in the Act.

8. In the next case decided by the Supreme court reported in [Seth Badri Prasad Vs. Srimati Kanso Devi](#), the Supreme Court held, inter alia, that the word acquired" should be given the widest possible meaning. It has been held that subsection (2) of section 14 is more in the nature of a proviso or an exception to subsection (1). It comes into operation only 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 property. In paragraph 7 of the said judgment the Supreme Court while considering the effect of section 14(2) held as follows :

9. Sub-section (2) of Section 14 is more in the nature of a proviso or an exception to subsection (1). It can 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 the female Hindu who is in possession of the property. The Madras High Court was right in the observations made in [Rangaswami Naicker Vs. Chinnammal and Another](#), that sub-section (2) made it clear that the object of section 14 was only to remove the disability on women imposed by law and not to interfere with contracts, grants or decrees etc., by virtue of which a woman's right was restricted in [Sukhram and Another Vs. Gauri Shankar and Another](#), , one Kishan Devi had acquired in 1952 the same interest in the property of the joint family which her husband Hukum Singh had under the provisions of Act XVIII of 1937. The question arose, whether after the coming into force of the Act she got rights of full ownership and could alienate the properties in which she had acquired a limited interest without the consent of the male members of the family. This court decided that she had become full owner by virtue of the provisions of S. 14(1) of the Act. This case is quite opposite for our purpose and we must hold that the respondent became a full owner of the suit properties when the Act came into force. The mere fact that there was a partition by means of arbitration which resulted in an award and a decree based on it would not bring the matter within sub-s (2) as the provisions of sub-s. (1) became fully applicable particularly in view of the express terms of the Explanation."

9. In the case reported in [Mst. Karmi Vs. Amru and Others](#), it has been held again that a widow who succeeds to properties of her deceased husband on the strength of will executed by the husband in her favour cannot claim any right in the properties other than those conferred by the will. It has also been held that where only life estate is conferred on her under the will, she cannot claim to have become absolute owner under the Act. While considering that proposition, the sole question for decision was whether Nihali got the properties on the strength of the will dated November 13, 1937 or in her own right as the heir to her husband and on the basis of the finding of fact both the Courts held that Nihali having succeeded to the properties of Jaimal on the strength of that will cannot claim any right in those

proper ties over and above that given to her under that will.

10. In the case reported in AIR 1977 SC 1944 (V Tulasamma Vs. V. Sesha Reddi) the Supreme Court again considered the applicability of section 14(1) and (2) in respect of Hindu female acquiring property under compromise in lieu of satisfaction of her right of maintenance. It was held that the compromise prescribed a limited interest and section 14(1) applies and not section 14(2). It has been held by the Supreme Court at page 1948 in paragraph 4 that section 14(1) is large in its amplitude and covers every kind of acquisition of property by a female Hindu including acquisition in lieu of maintenance and where such property was possessed by her at the date of commencement of the Act or was subsequently acquired and possessed, she would become the full owner of the property. It has been held in the same judgment at page 1948 that it must be confined to cases where property is acquired by a female Hindu for the first time as a grant without any pre-existing right, under a gift, will instruments, decree, order or award, the terms of which prescribes a restricted estate in the property. In the last few lines of paragraph 4, the Supreme Court held as follows:

This circumstances would also seem to indicate that the legislative intendment was that sub-section (2) should be applicable only to cases where acquisition of property is made by a Hindu female for the first time without any pre-existing right - a kind of acquisition akin to one under gift or will. Where, however, property is acquired by a Hindu female at a partition or in lieu of right of maintenance, it is in virtue of a pre-existing right and such an acquisition would not be within the scope and ambit of sub-section (2), even if the instrument, decree, order or award allotting the property prescribes a restricted estate in the property.

11. In the case reported in [Bai Vajia \(Dead\) by Lrs. Vs. Thakorbhai Chelabhai and Others](#), the Supreme Court again considered the effect of section 14(1) and (2) of the Hindu Succession Act, 1956. It has been held that a plain reading of sub-section (1) makes it clear that the concerned Hindu female must have limited ownership in property, which limited ownership would get enlarged by the operation of that sub-section. Limited ownership in the concerned Hindu female is thus a sine qua non for the applicability of subsection (1) of section 14 of the Act. In paragraph 4 of the said judgment it has been held that when a widow holds the property for her enjoyment as long as she lives, nobody is entitled to deprive her of it or to deal with the property in any manner to her detriment. The property is for the time being beneficially vested in her and she has the occupation, control and usufruct of it to the exclusion of all others. Such a relationship to property falls squarely within the meaning of the expression "limited owner" as used in sub-section 1 of section 14 of the Act. Their Lordships further held in paragraph 5 that a combined reading of the two sub-sections and the Explanation leaves no doubt that sub-section (2) does not operate to take property acquired by a Hindu female in lieu of maintenance or arrears of maintenance (which is property specifically included in the enumeration

contained in the Explanation) out of the purview of sub-section (1).

12. From these judgments of the Supreme Court, it is clear that the executor by Nirupan patra wanted to give away the property to his second wife mention in the cha schedule property exclusively for the purpose of enjoying the usufruct thereof and for possession of the same. It is stated therein that she will not be entitled to sell or in any way transfer the property. This condition is in the Nirupan Patra by which the deed takes effect immediately among the heirs of the executor. This is a limited right given to the second wife but that limited right, as rightly urged by Mr. Sengupta, is in lieu of maintenance. The vendor of the plaintiffs is entitled to the share of the husband's property in lieu of maintenance and it has been held in the case reported in AIR 1976 SC 807 that Nirupan Patra only settles the right, title and claim of the parties to the deed in a particular way. If there is a stranger who has no right, title and interest in the property, there cannot be Nirupan Patra between the strangers. In my opinion, therefore, in view of the Supreme Court judgments hereinbefore stated, the right, title and interest of the widow which has been a limited interest itself in the deed to some extent, ripens to absolute ownership in view of section 14(1) of the Act.

13. Mr. Mitter, however, contended that unless there is pre-existing right, section 14(1) has no application and section 14(2) applies. In my opinion as I look into the matter, section 14(1) only comes into play if the right is acquired on the basis of the document executed. In order to invoke section 14, the essential condition is that the instrument, decree or order of the Court must be the foundation of the woman's title to the property. If she had an existing interest in the property at the time of the acquisition it will not affect the operation of sub-section (1). In the present case Nirupan Patra was executed on 25th May, 1950. The executor of Nirupan Patra died in 1360 B. S. (1953): The second wife left her husband's place in 1363 B. S. and the property was transferred in 1961 long after the death of her husband. It appears to me that the plaintiffs' vendor had a pre-existing right of maintenance in respect of the property in question and in this Nirupan Patra provisions were made. In the defendants' own written statements it has been stated that the defendants' father gave away the other property to defendants Nos. 1 to 6 absolutely and to the wife of the executor. The executor had 6 sons and a second wife. It has been provided that this Nirupan Patra was executed in order to avoid the possible litigation. It is clear, in my opinion, that widow of the executor had the right, title and interest. She had also pre-existing right which has been acknowledged by the Nirupan Patra and in view of the Supreme Court judgment as hereinbefore stated, section 14(1) of the Act in terms applies and section 14(2) of the Hindu Succession Act has no application.

14. Mr. Sengupta on behalf of the appellants referred to sections 10 and 11 of the Transfer of Property Act and contended that in view of sections 10 and 11 of the Act the transfer was made absolutely, this transfer is invalid by the Transfer of Property Act and therefore void. He has referred to 14 CLJ 303,

[Gayasi Ram and Others Vs. Shahabuddin and Others,](#), [Mt. Brij Devi Vs. Shiva Nanda Prasad and Others,](#) in support of his contention. In my opinion, in view of the facts I am of the opinion that section 14(1) applies, in the facts and circumstances it is not necessary for me to go into the question of Transfer of Property Act or to consider these decisions. It appears to me, therefore, that both the Courts below were wrong in holding that the plaintiffs had no right, title and interest in the property by the purchase of the property from the second wife of Dharanidhar Maity, i.e Pushparani. The appeal is allowed and the judgments and decrees of the Court below are, therefore, set aside. The plaintiffs' suit must be decreed in full but in the facts and circumstances of the case parties will bear costs throughout.