

Sailabala Dasi Vs Sailabala Dasi

Court: Calcutta High Court

Date of Decision: April 29, 1960

Acts Referred: Hindu Succession Act, 1956 " Section 14, 14(1), 14(2)
Land Acquisition Act, 1894 " Section 32, 32(1), 32(1)(b)

Citation: AIR 1961 Cal 26 : 64 CWN 605

Hon'ble Judges: P.N. Mookerjee, J; Guha, J; Banerjee, J

Bench: Full Bench

Advocate: Rajendrabhusan Bakshi, Sushanta Kumar Sen and Sailendra Nath Roy Chowdhury, for the Appellant; Sudhanshu Kumar Sen and Khagendra Nath Bose, for the Respondent

Judgement

Banerjee, J.

This is a reference made to a Special Division Bench, under the second proviso to Rule 1, Chapter II of the High Court

Appellate Side Rules. The questions of law referred for determination are:

(a) Whether the compensation awarded in respect of a property in the possession of a widow, who had not, at the date of the acquisition absolute

interest therein and kept under the provisions of the Land Acquisition Act with the Land Acquisition Court of the President of the Improvement

Tribunal is property "possessed" by a female Hindu, within the meaning of Section 14(1) of the Hindu Succession Act, 1956.

(b) Whether this money is property acquired by the widow under a decree or an award prescribing a restricted estate therein, within the meaning

of Section 14(2) of the Act.

2. K. C. Das Gupta and Law JJ., who recommended the reference of the two questions to a Special Division Bench, observed that such a

reference was necessary:

In view of the great importance of these questions is bound to affect the interests of innumerable persons in money lying in deposit with the Land

Acquisition authorities on the date, when the Hindu Succession Act, 1956, came into force.

Section 14 of the Hindu Succession Act, 1956, referred to above, is hereinbelow set out:-

Section 14(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 device,

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.

I need refer to the facts of the case briefly so as to understand how this reference came to be made.

3. Premises No.39, Chandni Chawk Street originally belonged to one Dashmoni Dasi. She died leaving two daughters, Shyamasundari and

Tripura Sundari. Under the last will and testament of Dashmoni, Shyama Sundari was bequeathed a ten annas share and Tripura Sundari a six

annas share in the aforesaid premises, subject to certain charges as to Deva-Sheva. Tripura Sundari died, in or about the year 1888, leaving two

sons Gopal Chandra and Beni Madhab, who succeeded her, each having a three annas share in the property. Gopal died in the year 1891 and

was succeeded by his two sons Bepin Chandra and Narendra Nath. Bepin married twice. His first wife predeceased him, leaving two daughters,

Sailabala (the petitioner) and Mrinalini, now dead. Bepin himself died in the year 1913, his second wife (the opposite party) surviving him. On the

death of Bepin, she inherited, in the right of a Hindu widow, an one anna six pies share in the premises, to which Bepin was entitled.

4. The aforesaid premises was acquired under the Land Acquisition Act, and a sum of Rs.1,55,250/- was awarded, on February 20, 1937 as

compensation by the Land Acquisition Collector.

5. There being a dispute both over the valuation of the acquired premises and the apportionment of the amount of compensation, a reference was

made to the President of the Calcutta Improvement Tribunal.

6. The dispute as to apportionment of the compensation money, which was long and protracted, was ultimately widow of Bepin, was awarded

Rs.8425-7-5, as compensation due in her share.

7. Since the opposite party had a Hindu widow's interest in the acquired property, the President of the Improvement Tribunal exercised his power

u/s 32 of the Land Acquisition Act and invested the money in Government securities, with a direction for payment of the interest arising from such

investment to the said opposite party.

8. After the Hindu Succession Act, 1956, had come into operation, the opposite party fled an application before the President of the Improvement

Tribunal for withdrawal of the sum of Rs.8425-7-5, lying invested in Government Securities to her credit. The application was opposed by her

step daughter, the present petitioner, principally on the grounds that Section 14(1) of the Hindu Succession Act in terms did not apply to the

compensation money as invested or alternatively Section 14(2) of the said Act was a bar to the relief claimed by the applicant.

9. The President of the Calcutta Improvement Tribunal overruled the objection and passed the following order:-

The petitioner is found entitled to withdraw the money lying invested to her as she has become absolute owner thereof. Write a letter to the

Manager, Reserve Bank of India for selling the G.P. Notes and sending the sale proceeds to this Court. The amount, when received, will be paid

out to the petitioner on her application.

10. The petitioner moved against the aforesaid order in this Court and obtained a Rule. When the Rule came up for hearing before K. C. Das

Gupta and Law, JJ., their Lordships recommended a reference of the two points of law, hereinbefore stated, to a Special Division Bench.

11. Mr. Rajendra Bhusan Bakshi, the learned Advocate for the petitioner, contended that the words "any property possessed by a female Hindu

in Section 14(1) of the Hindu Succession Act, 1956, were referable only to property directly possessed by a female Hindu on the date of the

commencement of the Act. As on that date, Mr. Bakshi contended, the compensation money was not in possession of the Hindu female, namely,

the opposite party, but did lie invested in Government Securities either in possession of the President of the Improvement Tribunal or of the Reserve

Bank of India, Section 14(1) of the Hindu Succession Act, would not be attracted in the facts of the instant case. Mr. Bakshi argued, in the next

place, that by the order made in the apportionment case read with the order passed u/s 32 of the Land Acquisition Act, there was prescribed a

restricted estate, within the meaning of Section 14(2) of the Hindu Succession Act, in the compensation money awarded to the opposite party. u/s

14(2) of the Hindu Succession Act, Mr. Bakshi argued, nothing contained in sub-section (1) of Section 14 shall apply to such compensation

money and the opposite party shall not be entitled to full ownership over such money.

12. I need state at the outset that Mr. Bakshi did not dispute that money paid as compensation for land acquired under the Land Acquisition Act,

remained impressed with the character of real estate. He did not also dispute the correctness of the legal proposition, laid down by Mookerjee and

Carnduff, JJ. in *Mrinalini Dassi v. Abinash Chandra*, (1) (14 CWN 1024), that until the money, awarded as compensation to a limited owner,

passed into the hands of person or persons absolutely entitled thereto there was a constructive re-conversion thereof into land, during the period it

did lie invested in a Government Securities. He proceeded on the basis that such compensation money was notionally real property.

13. What he contended was that the compensation money, although property, was not possessed by the opposite party on the material date,

namely, when the Hindu Succession Act, 1956, came into operation.

14. This makes it necessary for me to examine the conception of possession in Jurisprudence and as used in the Act.

In the whole range of legal theory", observed Salmond in his book on Jurisprudence, "there is no conception more difficult than that of

possession". The difficulty is due to the dual conception of possession, as possession in fact and as possession in law. By permutation and

combination of the two conceptions, three classifications of possession may be made (i) possession in fact and in law (ii) possession in fact but not

in law (iii) possession in law but not in fact. Illustrative of the first classification of possession is a house in the direct possession of its lawful owner.

Illustrative of the second classification of possession is a house in the possession or the custody of a servant or an agent, on behalf of the master or

the principal who is the lawful owner, or in wrongful possession of a trespasser. Illustrative of the third classification of possession is a house in

possession of one out of several co-sharers. So far as the third classification of possession is concerned, says Salmond, "The law attributes the

advantages and the results of possession to some one, who as a matter of fact does not possess. The possession thus fictitiously attributed to him is

by English lawyers termed "Constructive".

15. The word "possession" in Section 14(1) of the Hindu Succession Act, must be taken to have been used in the widest possible sense.

16. This interpretation of the word "possession", in Section 14(1) of the Hindu Succession Act, was at first given by P. N. Mookerjee, J. in his

separate judgment in *Gostha Behari Bera and Others Vs. Haridas Samanta and Others*, . Observed his Lordship :-

The opening words "any property possessed by a female Hindu" obviously mean that, to come within the purview of the section, the property

must be in the possession of the female concerned at the date of commencement of the Act. They clearly contemplate the female's possession

when the Act came into force. That possession might have been either actual or constructive or in any form, recognised 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 its widest connotation, when the Act came into force, the section would not

apply.

17. The foregoing observations by his Lordship were approved by the Supreme Court in the case of Gummalapura Taggina Matada Kotturuswami

Vs. Setra Veeravva and Others, .

18. Imam, J., who delivered the judgment observed:-

In the case before us, the essential question for consideration is as to how the word "any property possessed by a female Hindu, whether

acquired before or after commencement of this Act" in Section 14 of the Act should be interpreted. Section 14 refers to property which was

acquired before or after the commencement of the Act and that such property should be possessed by a female Hindu. Reference to property

acquired before the commencement of the Act certainly makes the provision of the Section retrospective, but even in such a case the property

must be possessed by a female Hindu at the time the Act came into force in order to make the provisions of the section applicable. * * * * * On

behalf of the respondent it was urged that the words "possessed by" had a wider meaning than actual physical possession, although physical

possession may be included in the expression. In the case of Gaddam Venkayamma and Others Vs. Gaddam Veerayya (died) and Others ,

Viswanatha Sastri J., with whom Satyanarayana Raju J. agreed, expressed the opinion that ""the word "possessed" in Section 14 refers to

possession on the date when the Act came into force. Of course, possession referred to in Section 14 need not be actual physical possession or

personal occupation of the property by the Hindu female but may be possession in law. The possession of a licensee, lessee or mortgagee from the

female owner or the possession of a guardian or trustee or an agent of the female owner would be her possession for the purpose of Section 14.

The word "possessed" is used in Section 14 in a broad sense and in the context possession means the state of owning or having in one's hand or

power. It includes possession by receipt of rents and profits."" The learned Judges expressed the view that even if a trespasser were in possession

of the land belonging to a female owner, it might conceivably be regarded as being in possession of the female owner, provided the trespasser had

not perfected his title. We do not think that it is necessary for us to go to the extent to which the learned Judges went. It is sufficient to say that

"possessed" in Section 14 is used in a broad sense and in the context means the state of owning or having in one's hand or power. In the case of

Gostha Behari Bera and Others Vs. Haridas Samanta and Others, (corresponding to 61 CWN 329) P. N. Mookerjee, J. expressed the opinion

as to the meaning of the words "any property possessed by a female Hindu" in the following words:

The opening words "any property" possessed by a female Hindu, obviously mean that, to come within the purview of the section, the property

must be the possession of the female concerned at the date of the commencement of the Act. They clearly contemplate the female's possession

when the Act came into force. That possession might have been either actual or constructive or in any form, recognised 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 its widest connotation, when the Act came into force, the section would not

apply.

19. In our opinion, the view expressed above is the correct view as to how the words "any property possessed by a female Hindu" should be

interpreted.

20. On the question whether possession by a trespasser, who has not perfected his title by adverse possession, would amount to possession by a

female Hindu within the meaning of Section 14 of the Hindu Succession Act, there is difference of opinion between the Andhra Pradesh High

Court decision (4) (Gaddam Venkayamma and Others Vs. Gaddam Veerayya (died) and Others), referred to in the judgment of the Supreme

Court (3) (Gummalapura Taggina Matada Kotturuswami Vs. Setra Veeravva and Others,), and an Orissa High Court decision reported in (5)

Sansir Patelin and Another Vs. Satyabati Naikani and Another, . In the Orissa decision Mahapatra, J. (Das, J. concurring with him) observed as

follows:-

"We respectfully agree with the observations made by their Lordships of the Andhra High Court excepting one point. Viswanatha Sastri J., while

giving a wider meaning to the word "possessed" had made an observation that it might also include the possession of a trespasser. In my opinion it

is putting too wide a meaning. A trespasser's possession can never be taken to be a possession in any mode of the rightful owner as his possession

is completely adverse to the interest of the rightful owner.

21. The Supreme Court, in the decision reported in (3) Gummalapura Taggina Matada Kotturuswami Vs. Setra Veeravva and Others, , did not

feel itself called upon to pronounce its opinion on this aspect of the matter. It is not necessary for me also to express my views on the effect of

trespasser's possession, because no such question is involved in the reference made to us.

22. The view expressed by P. N. Mookerjee J. in (2) 61 CWN 329, I notice, was followed by Ramaswami J. in Arumuga Gounder v.

Nachimuthee Pillai (6) (AIR 1958 Mad 458), by Mahapatra and Das, JJ. ansir Patelin v. Satyabati Nairani (5) (Sansir Patelin and Another Vs.

Satyabati Naikani and Another,) and by Mullick J. in Krishna Dasi Saha v. Akhil Chandra Saha (7) (Sm. Krishna Dassi Saha Vs. Akhil Ch. Saha

and Another,).

23. Keeping in view the meaning of the word "possession" as aforesaid, I have now to see in whose possession the money invested in Government

Securities remained on the material date, namely, when the Hindu Succession Act came into operation.

24. Section 32 of the Land Acquisition Act, dealing with investment of money deposited in respect of lands belonging to persons incompetent to

alienate, is to the following effect:-

Section 32(1) - If any money shall be deposited in Court under sub-section (2) of the last preceding section and it appears that the land in respect

whereof the same was awarded belonged to any person who had no power to alienate the same, the Court shall -

(a) order the money to be invested in the purchase of other lands to be held under the like title and conditions of ownership as the land in respect

of which such money shall have been deposited was held; or

(b) if such purchase cannot be effected forthwith, then in such Government or other approved securities as the Court shall think fit;

and shall direct the payment of the interest or other proceeds arising from such investment to the person or persons who would for the time being

have been entitled to the possession of the said land, and such moneys shall remain so deposited and invested until the same be applied -

(i) in the purchase of such other lands as aforesaid; or

(ii) in payment to any person or persons becoming absolutely entitled thereto.

(2) In all cases of moneys deposited to which this section applies the Court shall order the costs of the following matters, including therein all

reasonable charges and expenses incident thereto, to be paid by the Collector namely -

(a) the costs of such investments as aforesaid;

(b) the costs of the orders for the payment of the interest or other proceeds of the securities upon which such moneys are for the time being

invested and for the payment out of Court of the principal of such moneys, and of all proceedings relating thereto, except such as may be

occasioned by litigation between adverse claimants.

25. There is no dispute that the purchase of Government Securities u/s 32(1)(b) of the Land Acquisition Act was made in the name of the opposite

party Sailabala Dassi. The physical custody of the Government Securities was with the Reserve Bank of India. The opposite party, Sailabala, was

being paid the interest on the investment as made.

26. Mr. Bakshi contended that the possession of the Government Securities, on the material date, was not that of the female Hindu, namely, the

opposite party Sailabala, but was either that of the Land Acquisition Act or of the Reserve Bank of India.

27. In my opinion this contention is misconceived. Although, not in physical possession of the Government Securities herself, hers was the

possession in law. She was in possession of the acquired property prior to the acquisition. But for Section 32 of the Land Acquisition Act, she

would have been paid the compensation money. The object which Section 32 of the Land Acquisition Act has behind it, to quote the language of

Mookerjee and Carnduff JJ. in 14 CWN 1024 (1) (Mrinalini Dassi v. Abinash Chandra), is:-

To put the matter in another way Section 32 makes it reasonably plain that, although an owner may be deprived of his land for the sake of public

purposes, the legislature intended that the protection enjoyed by reversionary heirs when land is in the hands of limited owners should not, by

reason of the acquisition alone, be completely withdrawn. This object would be defeated if upon the conversion of the land into money the limited

owner was allowed to seize the fund and to deal with it as absolute owner. If such a state of thing was tolerated the possibility would not by any

means be too remote, that the ultimate owner may be deprived of the use of the fund upon the termination of the limited estate.

28. Under the provision of Section 32, therefore, the compensation money had either to be invested in the purchase of other lands, to be held

under the like title and condition of limited ownership, or to be invested in the purchase of approved Government Securities in the name of the

limited owner.

29. The limited owner, nevertheless, remains the owner of the Government Securities. The fact that the Reserve Bank retains the custody of the

Government Securities is a matter of convenience for the purpose of payment of interest and cost to the limited owner, as provided for in the said

Section 32. The possession is, in law, the possession of the limited owner and the custody of the securities by the Reserve Bank is possession on

behalf of the limited owner. Section 32 does not in terms say that the investment in Government Securities shall remain in possession of the Court,

the Reserve Bank or any body else. That the custody of the securities is not given in fact to the limited owner is, as I have said, for the purpose of

convenience in the matter of payment of interest and cost. For proved legal necessities the limited owner may become entitled to the physical

possession of the money so invested and until that time the money remains in custody of the Reserve Bank or the Court on behalf of the limited

owner, who remains in constructive possession.

30. In the view that I take, I hold that the compensation money payable to a Hindu widow, lying invested u/s 32 of the Land Acquisition Act, at the

date when the Hindu Succession Act, 1956, came into operation must be treated to be possessed by the female Hindu, within the meaning of

Section 14(1) of the said Act.

31. I have now to consider the second branch of the argument of Mr. Bakshi. He contended that the order made by the President of the Calcutta

Improvement Tribunal, apportioning a sum of money out of the total amount of compensation in the share of the opposite party, Sailabala, read

with the order for investment of the money in Government Securities was an order of a Civil Court prescribing a restricted estate in the property

that is to say, in the apportioned compensation money. Mr. Bakshi contended that as such the property fell within the mischief of Section 14(2) of

the Hindu Succession Act and nothing contained in Section 14(1) would apply to such property.

32. This argument, in my opinion, is also misconceived. I have already stated that in the property, that was acquired, the opposite party, Sailabala,

had only the limited estate of a Hindu widow succeeding to her husband. In the compensation money payable for the acquisition of the property, in

which the opposite party Sailabala had a share, the limited character of Sailabala's estate remained impressed. When, on apportionment, the

disputed sum of money was awarded in her share, that money also retained the characteristic which Sailabala had in the acquired property itself,

because the apportioned compensation money must be treated as land, constructively or under legal fiction. The apportionment order did not,

therefore, create the restricted estate. By directing the investment of the money into Government Securities, the Court only recognised a restricted

estate which was, all along, the true character of the property that the opposite party Sailabala had in the estate. In my opinion, there is nothing

contained in Section 14(2) which deprives the opposite party, Sailabala, of the benefit of Section 14(1) of the Hindu Succession Act.

33. In my view, question (a) referred to this Bench must be answered in the affirmative and question (b) in the negative.

34. The parties shall bear their own costs of this reference.

35. Let this matter be now placed before the learned Chief Justice with the answers.

36. Guha, J. - I agree with Banerjee, J.

37. P. N. Mookerjee, J. - I agree but I would like to add a few words, - particularly, on Section 14(2) of the Hindu Succession Act, with

reference to the decision of Sarkar, J. and myself in the case of Jaria Devi Vs. Shyam Sundar Agarwalla and Others, , to which also reference was

made by Mr. Bakshi in his argument. That decision, as the report clearly shows, is only authority for the proposition, - which, of course, is not the

case here, - that, where the Hindu female's limited or restricted title is founded on some document or transaction, as mentioned in the said Section

14(2), and is not referable to Hindu law as such or in other words, where the true source of that particular title, - or, more precisely, of its

particular limited or restricted nature, - is not Hindu law as such but some such document or transaction as aforesaid, as was the case in the

decision cited, sub-section (2) of the said Section 14 will prevent the application of sub-section (1) thereof. In the present case, the true or real

source of the opposite party's limited or restricted title to the compensation money, which, in the eye of law, is the substitute for the acquired land,

is, indisputably, as already fully and lucidly explained by my Lord in his judgment, just delivered, her inheritance under the Hindu Law, - the said

money in question, merely representing her inherited share in the acquisition money or the acquired land - and it is, thus, even on the express terms

of the decision cited (vide Jaria Devi Vs. Shyam Sundar Agarwalla and Others,), within sub-section (1) of Section 14 and outside sub-section (2)

of the said section.

38. One word now on Section 32 of the Land Acquisition Act and the question of possession. Section 32 makes it quite clear that the

compensation money is the acquired land, transformed into money, retaining all the characteristics of the said acquired land as to inter alia, title and

possession. In other words, it remains impressed with all the said characteristics (including, of course, all restrictions also on title, etc.) which

attached to it, while it had its shape of land. This is patent on the face of the section, which interposes the conversion of the acquired land into

money and its investment or conversion into securities until its reconversion into land again, to be held under like title and conditions of ownership

(which include possession, vide Mrinalini Dasi and Anr. v. Abinash Chandra Datta and Ors., (1) 14 CWN 1024 at page 1031) as the acquired

land. The substance, then, throughout, remains the same, only a change in form intervenes, the thing in question losing none of its essential

characteristics. Viewed in the above light or context, the possession, during the transitional stage, remains the possession of the widow or the

limited owner, who was, admittedly, in such possession, it is, in possession of the acquired land, on the date of acquisition and who would, in point

of fact, be put in such possession, again, on reconversion into land as aforesaid, and the Land Acquisition Court's above interim custody of the

acquisition money or of the Securities, or any such custody on its behalf by the Reserve Bank of India, etc, would be, in the ultimate analysis,

plainly, on behalf of the said limited owner. This interim custody, imposed as a measure of protection in the reversioner"s interest, does not affect

the legal possession of the limited owner, which law throughout maintains without any the least effective or material disturbance.