

(1975) 03 CAL CK 0028

Calcutta High Court

Case No: S.A. No. 580 of 1965

Nilmoni Dassi

APPELLANT

Vs

Pashupati Biswas

RESPONDENT

Date of Decision: March 18, 1975

Acts Referred:

- Hindu Succession Act, 1956 - Section 14, 14(1), 14(2), 15, 16
- Land Acquisition Act, 1894 - Section 18

Citation: (1976) 2 ILR (Cal) 28

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

Bench: Single Bench

Advocate: Lala Hemanta Kumar and Rathindra Nath Bhattacharya, for the Appellant; S.K. Acharya and Kiran Chandra Mitra, for the Respondent

Final Decision: Allowed

Judgement

P.K. Banerjee, J.

This appeal by the Plaintiff-Appellant arises out of a suit for declaration that the order of the Additional District Judge under reference u/s 18 of the Land Acquisition Act directing that the award money should be kept in deposit in the Postal Savings Bank as the Appellant had only life interest in it and as such, was entitled to draw the interest only of this award money. The Plaintiff's case is that the Plaintiff has become absolute owner of the property as well as the award money by virtue of the Hindu Succession Act. The disputed property described in the kha schedule belonged to her husband Tinkari Biswas on whose death their son Gobinda inherited the property. Gobinda died in Bhadra 1345 B.S. leaving his mother Nilmoni as his sole heir. She thus inherited the property and began to possess it. For legal necessity she sold the property to one Dwijapada Pal by a kobala dated April 18, 1939, for Rs. 299 on condition of reconveyance if she could repay the consideration money. On August 19, 1943, Nilmoni purchased the property from Dwijapada Pal in the benami of her brother Narayan Chandra Pal. It is stated that Nilmoni has been in

possession all throughout. The property was acquired by the Government and compensation money was awarded in the name of Narayan Pal in whose name the kobala stood. The Respondent No. 1, reversioner of Tinkari, filed objection against the award wherein the learned District Judge disposed of the case holding, inter alia, that Narayan Pal was a benamdar of Nilmoni. Nilmoni had only life interest in the award money and that she would be entitled to withdraw the interest of the award money whereupon the Plaintiff filed the present suit for the declaration as stated above. The Respondent No. 1 alone contested the suit. The case of the Defendant was that the sale to Dwijapada was a fictitious one. The property was not repurchased in the benami of Narayan Pal. The Appellant had only limited interest in the property and as such, she has no locus standi to challenge the order of the learned District Judge. The learned Munsif held that the transfer of the property by Nilmoni to Dwijapada was not for legal necessity and that Nilmoni purchased in the benami of Narayan Pal from Dwijapada. The learned Munsif further held that the acquisition took place long before the Hindu Succession Act came into operation and as such, she could not claim absolute ownership in the disputed property on the basis of the Hindu Succession Act. The learned Additional District Judge upheld the finding of the learned Munsif that the Appellant had only limited interest in the property and there was no legal necessity for the sale of the property to Dwijapada and the repurchase was on her account in the name of Narayan Pal. It is also stated that she had all along possessed the property and the compensation was awarded in favour of Narayan Pal who was a benamdar. Narayan Pal had only a limited interest in the property and as such, she can only get the interest in the property out of the award money. Being aggrieved by the said judgment and decree, the Plaintiff-Appellant preferred the present appeal.

2. Two points arise in this case, firstly, whether Nilmoni's limited interest ripened into absolute right after the Hindu Succession Act came into force and secondly, whether the award will be a bar in this proceeding on the ground of principle of res judicata. If it is found that the Plaintiff-Appellant has an absolute interest in the property then she will be entitled to withdraw the award money as off right, otherwise she is entitled to the interest and the award will revert back to the reversioner, that is the Defendant, after the death of Nilmoni.

3. Mr. Acharya, however, contended that the Plaintiff has got the property on the basis of an instrument, that is, the transfer from Dwijapada to Narayan Pal whose purchase was as a benamdar of the Plaintiff and therefore, Section 14(1) of the Act has no application in the present case. Therefore, the Plaintiff was only limited owner in respect of the property acquired by the Government. u/s 14(2) of the Act it must be held according to Mr. Acharya that Nilmoni got her interest on the basis of an instrument occurring in the said section and therefore, Section 14(1) has no application. Section 14 of the Hindu Succession Act runs as follows:

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 moveable and immoveable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever and also any such property held by her as stridhan 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.

4. The broad facts on the concurrent finding of both the Courts below are that (i) Nilmoni got limited interest after the death of her husband and her son before 1956 and (ii) she sold the property to Dwijapada by kotala on April 18, 1939, but it was not for legal necessity at all. Therefore, by the purchase Dwijapada had interest in the property which Nilmoni had, that is, limited interest of enjoyment during the life-time of Nilmoni. Nilmoni repurchased from Dwijapada in the benami of Narayan. Both the Courts further held that all along Nilmoni was in possession of the property.

5. This finding of facts cannot be challenged in the second appeal. It will, therefore, appear that the sale by Nilmoni in favour of Dwijapada and subsequent purchase from Dwijapada in the benami of Narayan was only in respect of the limited interest Nilmoni possessed at that point of time and there was no legal necessity for the sale of the property in question. It must be further stated that Nilmoni was all along in possession of the property in question when the Hindu Succession Act came into force with effect from June 17, 1956, Nilmoni's limited interest changed into absolute interest in the hands of Nilmoni.

6. Mr. Acharya however, contended that Section 14(2) of the Hindu Succession Act is applicable in the facts of the present case as Nilmoni got the property on the basis of an instrument. Section 14(2) is an exception of Section 14(1) of the Hindu Succession Act. By Section 14(2) of the Act the Legislature restricts the right conferred u/s 14(1) in respect of the property acquired by the limited owner by way of gift or will or under a decree or order of a civil Court or under an award or under any other instrument where the terms of the gift, will or other instrument prescribed a restricted estate in such a property. The sale by Nilmoni to Dwijapada or by repurchase in the name of her brother did not in any way restrict the right of the limited owner. Section 14(2) of the Act came up for consideration in the Supreme

Court. The Supreme Court considered the effect of Section 14 in [Sukhram and Another Vs. Gauri Shankar and Another](#), . It has been held that a Hindu widow holding a property a limited owner, after coming into force of Section 14(1) of the Hindu Succession Act, has all the rights of full ownership in the interest in the property of the family and she was competent without the consent of the male members of the family to sell the property for her own purposes. It has been held further that the words u/s 14 of the Hindu Succession Act are express and explicit:

thereby a female Hindu possessed of property whether acquired before or after the commencement of the Act holds it as full owner and not as a limited owner,

and

when she became full owner of that property she acquired a right unlimited in point of user and duration and uninhibited in point of disposition.

A widow acquiring an interest in that property by virtue of the Act is not subject to any such restrictions. In the present case, as I have already held that Nilmoni's sale was without legal necessity, but it appears in the present case that Nilmoni purchased the property in the benami of her brother and was actually possessed by her when the Hindu Succession Act came into force. She was in possession of the property in question at the time of coming into force of the Hindu Succession Act, 1956. In a case, in [Seth Badri Prasad Vs. Srimati Kanso Devi](#), , relied upon Mr. Acharya, it was held as follows:

The point for our consideration is narrowed down to this. When a female acquires an interest under the provisions of Act XVIII of 1937 in the properties of her husband which are subsequently separated by means of a partition, does she become an absolute owner under Sub-section (1) of Section 14 of the Act or does she get only a restricted estate under Sub-section (2) of that section? The contention of the learned Counsel for the Appellant is that the Court should first look at Sub-section (2) and if the case does not fall within its ambit and scope then alone Sub-section (1) will become applicable. This manner of reading of the section is not unwarranted either on principle or authority. The section has to be read as a whole and it would depend on the facts of each case whether the same is covered by the first sub-section or Sub-section (2). The critical words in Sub-section (1) are "possessed" and "acquired". The word "possessed" has been used in its widest connotation and it may either be actual or constructive or in any form recognised by law. In the context in which it has been used in Section 14 it means the estate (state-Ed.) of owning or having in one's hand or power see [Gummalapura Taggina Matada Kotturuswami Vs. Setra Veeravva and Others](#), . In [S.S. Munna Lal Vs. S.S. Rajkumar and Others](#), , it was held that 1/4 share of a female which had been declared by the preliminary decree passed before the enactment of the Act was possessed by her within the meaning of Section 14 and she became the full owner so that on her death the said property descended to her grandsons in accordance

with the provisions of Sections 15 and 16 of the Act. The word "acquired" in Sub-section (1) has also to be given the widest possible meaning. This would be so because of the language of the explanation which makes Sub-section (1) applicable to acquisition of property by inheritance or devise or at a partition or in lieu of maintenance or arrears of maintenance or by gift or by a female's own skill or exertion or by purchase or prescription or in any manner whatsoever. Where at the commencement of the Act a female Hindu has a share in joint properties which are later on partitioned by metes and bounds and she gets possession of the properties allotted to her there can be no manner of doubt that she is not only possessed of that property at the time of the coming into force of the Act but has also acquired the same before its commencement.

It was held further that

Sub-section (2) of Section 14 is more in the nature of a proviso or an exception to Sub-section (1). It 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.

In the said judgment *Supra* (para 7) the Supreme Court also held as follows:

Sub-section (2) of Section 14 is more in the nature of a proviso or an exception to Sub-section (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. [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 Section 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-section (1) because fully applicable particularly in view of the express terms of the Explanation.

7. Applying this principle in the facts of the present case, I have no hesitation for holding that Nilmoni had a pre-existing limited ownership in the property. The deed of transfer made by her was without necessity. If at all she could transfer her limited

interest in the property and must be held to be in constructive possession through the transferee, who got the limited interest enjoyed by him during the life-time of the transferer Nilmoni, but even that is not to be considered in view of the fact that though there was a deed of transfer in favour of Dwijapada and repurchase by Nilmoni in the benami of her brother, she was all along in possession as found by both the Courts below. In the case [State of Assam Vs. Ranga Mahammad and Others](#), the Supreme Court held that the use of the expression "possessed by" instead of the expression "in possession of" in Section 14(1) was intended to enlarge the meaning of this expression to cover cases of possession in law. On the language of Section 14(1) the provision will become applicable to any property which is owned by a female Hindu even though she is not in actual physical or constructive possession of the property.

8. The section, however, will not apply to cases where the Hindu female may have parted with her rights so as to place herself in a position where she could in no manner exercise her rights in that property any longer.

9. In the said judgment the Supreme Court held as follows:

The next case in which Section 14 was considered by this Court was *Brahmdeo Singh and Anr. v. Deomani Missir and Ors.* In that case, the female Hindu, who had succeeded to the property as the widow of her husband Ramdeo Singh, had transferred the property under two sale deeds. It was held that the sale deeds were not for legal necessity; and the question arose whether, in those circumstances, when the Act came into force, it could be held that the widow was possessed of that property. This Court, after citing the judgment in the case of *Gummalapuna Tagginamatada Kotturuswami* held that the conflict of judicial opinion on this question had already been resolved in that earlier case where the Court had observed:

The provisions in Section 14 of the Act were not intended to benefit alieness who, with their eyes open, purchased the property from a limited owner without justifying necessity before the Act came into force and at a time when the vendor had only a limited interest of a Hindu woman.

10. The Court further dealt with the contention that the possession of the alieness is the possession of the widow herself, who is still alive and held:

We are unable to accept this contention as correct. It is well-settled that an alienation made by a widow or other limited heir of property inherited by her, without legal necessity and without the consent of the next reversioners, though not binding on the reversioners, is, nevertheless, binding on her so as to pass her own interest (i.e. life interest to the alieness). It was, thus, made clear in that case that the property was held not to be possessed by the widow, because, the alienation made by her being on her, she had no longer any legal right left in that property even in the sense of being in the state of owning it. The case, thus, explains why, in

cases of alienation or a gift made by a widow even though that alienation or gift may not be binding on a reversioner, the property will not be held to be possessed by the widow, because the alienation or the gift would be binding on her for her life-time and she, at least, would not possess any such right under which she could obtain actual or constructive possession from her transferee or donee. Having completely parted with her legal rights in the property, she could be said to be possessed of that property any longer.

11. In the present case Nilmoni was in possession of the property. The property was sold to Dwijapada without legal necessity on April 18, 1939, on condition of reconveyance if she could pay the consideration money. She purchased the said property from Dwijapada on August 9, 1943, in the benami of her brother Narayan. Therefore, at the date when the Hindu Succession Act came into force, Nilmoni was in possession of the property in question as a limited owner. At the relevant time she could exercise the right of limited ownership and in fact, exercised that right of possession when the Hindu Succession Act came into force. In that view of the matter, it appears to me that the right of the limited owner ripened into full ownership when the Hindu Succession Act came into force and therefore, she is entitled to the award money as an absolute owner in respect of the property acquired.

12. Mr. Acharya referred to [Sasadhar Chandra Day and Others Vs. Sm. Tara Sundari Dasi and Others](#), in support of his contention and stated that the right of the limited owner comes within the restriction of Section 14(2) of the Act as she got the property on the basis of the instrument, that is, the instrument of transfer from Dwijapada to Nilmoni. In that case it has been held that the words "any other instrument" etc. in Sub-section (2) must be construed ejusdem generis, that is, any other instrument of the nature whereby the acquisition is made in respect of the property in which the person had no interest previously. In the present case, however, Nilmoni had have limited interest in the property which she transferred and repurchased long before the Hindu Succession Act came into force and on the date when the Hindu Succession Act came into force possessed all the property on her own right as a limited owner. In that view of the matter, the judgment and decree passed by the Courts below must be set aside and the appeal must be allowed but without any costs.

13. Leave under Clause 15 of the Letters Patent is granted.