(1980) 11 BOM CK 0019

Bombay High Court

Case No: Special Civil Application No. 1636 of 1977

Kesharbai Jagannath Gujar		APPELLANT
	Vs	
The State of Maharashtra and Others		RESPONDENT

Date of Decision: Nov. 12, 1980

Acts Referred:

- Hindu Adoptions and Maintenance Act, 1956 - Section 12, 13, 14, 15, 16
- Hindu Succession Act, 1956 - Section 14(1), 14(2), 4, 4(1)
- Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 - Section 45(2)

Citation: AIR 1981 Bom 115 : (1981) 83 BOMLR 159 : (1981) MhLj 1

Hon'ble Judges: B.N. Deshmukh, C.J; R.S. Bhonsale, J; M.N. Chandurkar, J

Bench: Full Bench

Advocate: M.D. Gangakhedkar and Ajit P. Shah, for the Appellant; A.S. Bobde, General, C.J. Sawant, Addl. Govt. Pleader, S.P. Kanuga, Asstt. Govt. Pleader, P.M. Pradhan and K.C. Sidhwa, for the Respondent

Judgement

Deshmukh, C.J.

This petition has been referred to a larger bench by a Division Bench by its Order dated 16th September 1980. The only question involved in the petition relates to the correct meaning and Interpretation of the provisions of Section 14 of the Hindu Succession Act. Since the facts were undisputed and that was the only question involved, the petition itself has been referred to the Full Bench.

2. The facts leading to this writ petition are not in dispute. One Jagannath Gujar died in 1934 leaving behind his widow Kesharbai. Kesharbai inherited three Gut Numbers from her husband together admeasuring 26 H. and 39 Rs. The amended Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 came into force on 2nd October 1975 with retrospective effect from 26th September 1970, which was the appointed day. Kesharbai fifed her return within time. She stated that she had

adopted a son Jitendra on 7th February 1964. She also claimed that her adopted son was entitled to one-half share in the properly. The Surplus Land Determination Tribunal accepted this contention of Kesharbai and stated that in view of the notional partition between Kesharbai and Jitendra, neither was a surplus holder. The case of Kesharbai Was disposed of by the Tribunal.

3. In a suo motu enquiry under S. 45 (2) of the said Act, the Divisional Commissioner issued notices to the parties and heard the parties. According to the Commissioner Kesharbai became full owner of the entire property left by her husband as a result of Section 14 of the Hindu Succession Act read with Section 12(c) of the Hindu Adoptions and Maintenance Act, 1956. In that view Kesharbai alone would become the full owner and holder of 26 H. 39 Rs left by her husband. Under the new Ceiling Act credit was given to the maximum holding of 21 H. 35 Rs. and the balance was declared surplus. Aggrieved by this Order of the Commissioner, Kesharbai has filed the present petition.

4. Pending the petition she died and two persons have been brought on record as her heirs and legal representatives, viz. the adopted son Jitendra in his capacity as an adopted son and one Alka Narayan Shah, the daughter of a pre-deceased daughter of Kesharbai. They reiterate the claim of Kesharbai that the decision of the Surplus Land Determination Tribunal was correct and should be restored.

5. The only question that arises for our determination and which has been properly framed by the learned Advocate-General is as follows:--

"Whether by reason of Section 14 of the Hindu Succession Act which converts the limited estate into full ownership, in the case of the joint family property, does the adopted son take interest by birth i. e. civil birth, from the date of his adoption ?"

The reference to a larger Bench became necessary though this point was apparently covered by a Division Bench judgment of this Court in the case of Yamunabai v. Ram Maharaj reported in AIR 1960 Bom 463, though another Division Bench took a contrary view. The decision and ratio of this judgment was approved and confirmed by the Supreme Court in the case of Punithavalli Ammal Vs. Minor Ramalingam and Another, . Two judgments were delivered separately by learned single Judges of this Court which followed the decision in Yamunabai''s case AIR 1960 Bom 463 as confirmed by the Supreme Court. Apparently, therefore, the law was settled and the question raised, had to be answered in the negative. However, a Division Bench of this Court in the case of Hirabai and Another Vs. Babu Manika Ingale, came to the conclusion, after distinguishing the above judgments, that the character of the joint family property belonging to a coparcenery does not change even though the only surviving person in the family is a widow who holds a limited estate and even though she was made full owner of the properly by virtue of the provisions of the Hindu Succession Act 1956. According to this judgment the widow does become the full owner of the property from and after 17th June 1956 but in spite of her full

ownership the property still retains its character as a joint Hindu family property together with some of the incidents still available. In that view the subsequently adopted son gets a right by birth in this property owned by the widow though the point of origin of that title is the date of adoption. He also gets a right of partition by virtue of his right by civil birth in the family. In that view, the notional partition permitted under the Agricultural Lands (Ceilings on Holdings) Act will operate and each must be deemed to be the owner of half the property for the purpose of computing their ceiling limits. Since this view taken by a Division Bench in Hirabai''s case runs counter of the law concluded not only by the Division Bench of this Court ,but by the. Supreme Court, this reference became necessary.

6. Before we refer to the decided cases, let us point out the provisions of the Hindu Succession Act, which are relevant. Section 4 lays down the overriding effect of the Succession Act so far as the Shastric Hindu Law is concerned. According to this section, save as otherwise expressly provided in this Act, any text, rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of this Act, shall cease to have effect with respect to any matter for which provision is made in this Act. It also provides that any other !aw in force immediately before the commencement of this Act shall cease to apply to Hindus in so far as it is inconsistent with any of the provisions contained in this Act. It is, therefore, clear that wherever there are provisions made by this Act in relation to the law of Succession, the customary Hindu law along with its texts, rules and interpretations of various Courts as also the custom and usage now ceased to be operative. The only law to which reference must be made in the matter of Hindu Succession is the law laid down by this Act wherever it makes provisions in that behalf.

7. The section which has raised the present controversy is Section 14 of that Act. Sub-section (1) together with its explanation is relevant for our purpose and it is reproduced for ready reference :--

"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 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 ''stridhana'' immediately before the commencement of this Act."

8. Prima facie, this section says that 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. The word "property" used in this section has been explained by the Explanation appended to that 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 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. Sub-section (2) carves out an exception. It has no relevance in this case and need not be considered. This provision again prima facie declares that irrespective of the source or the manner of acquiring the property, the property shall be held by a Hindu female hereafter as full owner thereof and not as a limited owner. After having so provided for the full ownership of a female Hindu, the succession to that property is also provided by Sections 15 and 16 of the said Act.

9. On the facts before us, the property which originally belonged to Jagannath appears to be his ancestral property. A copy of the Adoption Deed by which Jitendra was adopted, was made available to us by the learned Counsel for the petitioner and it recited that the property inherited by Kesharbai was the ancestral property of her deceased husband Jagannath. As Jagannath died in 1934 before the Hindu Women''s Right to Property Act came into force and was survived by his widow and daughter, the widow became the heir under the provisions of the Mitakshara Law as applicable in the Bombay State. This title of Kesharbai or the title of a limited owner is known to Hindu law as the widow''s estate. Admittedly she was possessed of this property right from [he date of death of her husband till her death pending this petition. Undoubtedly, she had a prior right, though limited, in this property when the Hindu Succession Act came into force on 17th June 1956. Neither of the counsel who appeared before us have doubted the proposition that Kesharbai became full owner of the property of her bus-band as from the 17th June 1956 as a result of the provisions of Section 14(1) of the Hindu Succession Act. The only question, therefore, is whether the adoption made by her subsequently in the year 1954 affects this full title m any manner or creates any right in this property in favour of the adopted son Jitendra.

10. As we have stated earlier, this point was already settled by a Division Bench of this Court in Yamunabai v. Ram Maharaj, reported in AIR 1960 Bom 463. Since this is the first judgment of this Court after the Hindu Succession Act came into force, the facts involved in that case and the conclusion arrived at therein deserve to be quoted. An Inamdar from the State of Kolhapur died leaving behind two widows. The senior widow was shown to be "Navawali" of the Inam properties. She adopted a son without obtaining the sanction from the then Government of the State of Kolhapur. After her death, her junior widow succeeded to the property and her name was entered as the "Navawali" or the holder of the Inam properties. Disputes arose between the adopted son and the step-mother regarding the ownership and

possession of the property. As holder in the Government record, the junior widow was in possession of the property all along. As a result of the dispute a suit came to be filed in which the junior widow as plaintiff pleaded that the adoption of the defendant was invalid as no sanction from the State Government was obtained. She impleaded her co-widow initially and asked for separate possession of her one-half share in the property. After the death of the co-widow she filed another suit in which she claimed that she was the owner of the entire property and was entitled to its possession as the adoption of the defendant was invalid in the absence of sanction from the State Government. The learned trial Judge upheld the adoption as a fact, but came to the conclusion that it was of no legal effect in the absence of sanction from His Highness the Maharaja of Kolhapur. A decree in favour of the plaintiff was thus passed. The matter came to this Court by way of First Appeal and the defendant claimed that he was adopted before 14-3-1949. The hearing of that appeal was adjourned by the Division Bench then seized of the matter to enable the defendant to obtain the necessary ex post facto sanction from the successor Government of the State of Bombay. The Division Bench delivered an interim judgment and granted time to the defendant adopted son to obtain ex post facto sanction, and the further hearing of the appeal was adjourned. The defendant succeeded in obtaining the requisite sanction and thereafter the appeal was further heard by the Division Bench. The further judgment resulting from this subsequent hearing has been reported in AIR 1960 Bom 463.

11. The first question which was decided in the above judgment was whether the adoption became operative in law on the actual date of adoption in 1949 or from the date of the ex post facto sanction granted pending the hearing of the appeal. The learned Judges came to the conclusion that the adoption becomes valid only from the date when the sanction was granted and did not operate retrospectively from the actual date when the adoption took place. This sanction was accorded long after the 17th June 1956 when Section 14(1) of the Hindu Succession Act had come into force. As a result of that sanction the plaintiff-junior widow Yamunabai claimed that she became the full owner of the entire property and the subsequent adoption could not have the effect of divesting any property from her. On these facts, the Division Bench came to the conclusion that the estate possessed by Yamunabai which became absolute by virtue of the provisions of Section 14 of the Hindu Succession Act, was not liable to be divested by the ex post facto sanction to the defendant''s adoption. A sanction ex post facto to an adoption might have the effect of divesting property vested in another person, by inheritance from the sole surviving coparcener, or a limited owner but that rule in so far as it is inconsistent with Section 14 was superseded by Clause (b) of Section 4. The Judges further observed that the estate held by a Hindu who was a sole surviving coparcener in a joint Hindu family was, it was true, liable to be restricted by the introduction of a coparcener by birth or adoption, and such new coparcener acquired an interest in the entire estate equal to the interest in the estate held by the existing coparcener,

but that incident of the estate did not justify the imposition of a limitation restricting the connotation of the expression "full owner" used in Section 14 of the Hindu Succession Act. Full ownership contemplated by Section 14 of the Succession Act was not made by the legislature subject to any incident of dive station by adoption.

12. The Division Beach points out in paragraph 7 of the report the real meaning and implication of the expression "full owner". They say that "full ownership" contemplated by Section 14 of the Succession Act is not made by the legislature subject to any incident of dive station by adoption. If liability to dive station be implied, it would cut across the estate and the estate would not be regarded as of a full owner within the meaning of Section 14 of the Act They were, therefore, unable to hold that the estate of the plaintiff was liable to be divested by the recognition ex post facto of the adoption of the first defendant by the State. While dealing with the conflict of claims between the adopted son and Yamunabai the plaintiff, the learned Judges observed as follows;--

"In resolving the conflict between these two rights, Clause (b) of Section 4 of the Hindu Succession Act is, in our judgment, decisive. By that clause any other law in force immediately before the commencement of the Hindu Succession Act ceases to apply to Hindus in so far as it is inconsistent with any of the provisions contained in the Act. The claim of the first defendant to the Inam properties of his father, which had devolved upon his adoptive mother Annapurnabai and thereafter by succession upon the plaintiff Yamunabai, must in our judgment, be subject to her title, which by statute became absolute."

13. There is, therefore, no doubt that a Division Bench of this Court has already held that an adoption subsequent to the commencement of the Hindu Succession Act does not and cannot have the effect of divesting the property which is vested in the adoptive mother in view of the provisions of Section 14(1) read with Section 4(1)(b) of the Hindu Succession Act. When the ex post facto sanction was obtained, the provisions of Section 12 of the Hindu Adoptions and Maintenance Act had also become operative as they came into force on 21st December 1956. In the argument before the Division Bench no reference was made to the provisions of this Act

14. On facts, which are more or less similar, the Madras High Court took the view that the adoption of the plaintiff before them must be deemed to relate back to the date of the death of Somasundara Udayar whose widow Sellathachi had adopted the plaintiff. Since Sellathachi, the widow, had made certain alienations after the adoption, she was incompetent to do so in view of the doctrine of relation back. When this decision was challenged before the Supreme Court by the alienee in the case of Punithavalli Ammal Vs. Minor Ramalingam and Another, the Supreme Court reversed the judgment of the Madras High Court and restored that of the trial court as confirmed by the first appellate Court, The Supreme Court pointed out that according to the Hindu law texts as interpreted by Courts, on adoption by a Hindu widow, the adopted son acquired all the rights of an aurasa son and those rights

related back to the date of the death of the adoptive father. Since the estate held by a widow was de-feasible estate under the Shastric Hindu law, the same was the case with a person possessing title defeasible on adoption, not only his title but also the title of all persons claiming under her would be extinguished on adoption. However, they found that after the introduction of the provisions of the Hindu Succession Act, the entire legal position changed in view of the provisions of Sections 4(1) and 14(1) of that Act. Having quoted the provisions of Section 14(1) of the Hindu Succession Act, the Supreme Court pointed out that it was conceded at the bar that Sellathachi was in possession of the property in dispute on the date the Act came into force. With these facts being found, the effect of the provisions of the Succession Act is stated by their Lordships of the Supreme Court as follows:--

"By virtue of the aforesaid provision, she became the full owner of the property on that date. From a plain reading of Section 14(1), it is clear that the estate taken by a Hindu female under that provision is an absolute one and is not defeasible under any circumstance. The ambit of the estate cannot be cut by any text, rule or interpretation of Hindu law. The presumption of continuity of law is only a rule of interpretation. That presumption is inoperative if the language of the concerned statutory provision is plain and unambiguous. The fiction mentioned earlier is abrogated to the extent it conflicts with the rights conferred on a Hindu female u/s 14(1) of the Act."

The judgment then proceeds to refer to some of the earlier decided cases. In paragraph 7 of the report, it is stated that the learned Judges of the Madras High Court were not right in limiting the scope of Section 14(1) by taking the aid of the fiction mentioned earlier. In the view of the Supreme COURT that was wholly impermissible. They pointed out that on the point under consideration the decision of the Bombay High Court in Yamunabai v. Ram Maharaj, AIR 1960 Bom 463 laid down the law correctly.

15. It will thus appear that the language of the provisions of the Hindu Succession Act as interpreted by this Court and the Supreme Court clearly lays down that the full ownership conferred on a Hindu female u/s 14(1) of that Act is unaffected by any subsequent event and cannot be abrogated by referring to certain fictions under the Shastric Hindu Law. In this judgment also the adoption was made on 13th July 1956, which is the date after the coming into force of the Hindu Succession Act but before the date when the Hindu Adoptions and Maintenance Act, 1956 came into force. There is, therefore, no reference to the provisions of Section 12 of that Act in this judgment also. It will thus appear that the legal position was not only clear but firmly established by a judgment of the Supreme Court.

16. A Division Bench of this Court while deciding the case of Hirabai and Another Vs. Babu Manika Ingale, has accepted at one stage that this judgment of the Supreme Court in Punithavalli Ammal Vs. Minor Ramalingam and Another, bound all Courts in India, but observed that the authority of that judgment is shaken by a subsequent

decision of the Supreme Court in the case of Shripad Gajanan Suthankar Vs. Dattaram Kashinath Suthankar and Others, After citing a passage from Shri-pad''s judgment the learned Judges observed :--

"It is obvious that with reference to Section 12 of the Adoption Act, the Court did declare that the adopted child would be deemed to be the child of his or her adoptive father or mother for all purposes with effect from the date of the adoption. But for these observations we would have been bound by the decision in Punithavalli Animal''s case."

They further pointed out that the property inherited by the widow in Punithavalli Animal''s case has not been expressly stated to be coparcenery property in the hands of her husband. She inherited the husband''s property and disposed of a part of it after adoption. However, she had disposed of that property after she became the full owner thereof u/s 14(1) of the Succession Act. On these facts the Supreme Court decided the dispute before them. The Division Bench thus thinks that the nature of the property in the hands of the husband which is inherited by the widow has considerable relevance and may lead to a different conclusion.

17. Before coming to this conclusion, the main thesis on the basis of which the Division Bench has chosen to take a contrary view to that of Supreme Court may now be stated. According to the learned Judges, the joint family property belonging to a coparcenery is a concept special to Hindu Law. Even if in a coparcenery there is a sole surviving coparcener, the nature of the property does not change. If that sole surviving coparcener is survived by his widow, the property still continues to be of the same nature in the hands of the widow. Having come to that conclusion, the next step taken by the Division Bench is that this special character of the property is not affected at all even though the widow in possession of the property is made the full owner thereof under the provisions of Section 14(1) of the Hindu Succession Act. It may be incidentally noted that all the learned Counsel before us conceded that the doctrine of "relation back" in the case of adoption is no more available after the Hindu Succession Act and the Hindu Adoptions and Maintenance Act came into force. The learned Judges of the Division Bench also take the same view. It is conceded that the right of the adopted son, whose adoption took place after, the Hindu Succession Act came into force, arises only from the date of his adoption. In spite of this position, a view is taken that the nature of the property in the hands of the widow in spite of the enlargement of her title to full ownership does not change. In other words, it is joint family property of the coparcenery held by the Hindu widow but as full owner after the operation of Section 14(1) of the Hindu Succession Act. That being so, and as Shripad Gajanan Suthankar Vs. Dattaram Kashinath Suthankar and Others, throws doubt on the authority of Punithavalli Ammal Vs. Minor Ramalingam and Another, , the learned Judges concluded that they must give effect to the special nature of the property, viz., the joint family property belonging to a coparcenery in the hands of a widow, who is now declared as full owner. It is

also conceded in the judgment as also in the argument before us that being the "full owner" the widow could dispose of the property as she liked and no disposal by her before the date of adoption is challengeable by the adopted son. However, they also observed the moment adoption takes place, in view of the said character of the property, the adopted son gets title as if by birth on the date of the civil birth. That title is equal to that of the mother. Hence he is entitled to one half share in the property still surviving in the hands of the widow after such disposal as she may have made earlier. From that point of time, viz. the date of adoption, he is co-owner with the mother to the extent of a moiety.

18. It is necessary to examine how far this is a permissible conclusion and how far it will stand the test of correctness in view of the earlier Judgments already referred to. We may again emphasise that the provisions of Section 14(1) of the Hindu Succession Act have already been interpreted by the highest Court and there is no scope for re-examination of the proposition or for taking a different view. However, since a contrary view has already been taken, let us examine how far the reasoning can be accepted.

19. The main thesis relates to the nature of the property in the hands of the widow. As we have stated a little earlier, before the coming into force of the Hindu Succession Act, the position undoubtedly was what has been stated by the learned Judges. The widow of the last surviving coparcener held property only by way of life interest and it was a defeasible title if a son was adopted in the family. If the widow died without adoption, the property reverted back to the heirs of the husband and did not devolve upon her own heirs. The short question is whether this nature of that property receives a positive change by the introduction of Section 14(1) of the Hindu Succession Act. Now, we may also point out at this stage that the adopted son gets all the rights and privileges which the natural born son has under the Shastric Hindu Law. A declaration to that effect is also made by the provisions of Section 12 of the Hindu Adoptions and Maintenance Act, 1956. The adopted child is to be deemed to be the child of his or her adoptive father or mother for "all purposes" with effect from the date of adoption. This declaration is thus conditioned by the fact that its operation takes place from the date of the actual adoption and there is no relation back to the death of the father to whom the mother made the adoption. Under the traditional Hindu Law if the adoptive father has only self-acquired property, the adopted son will not get any interest in the property of the father because of the adoption for the same reason that the natural son of such a father also had no interest, by virtue of the self-acquired nature of the property of his father. The existence of the joint Hindu family properly is, therefore, sine qua non for a son to get a right by birth whether he is a natural born son or adopted one.

20. Does this situation now survive after the operation of Section 14(1) of the Hindu Succession Act? In our view it does not. The first important declaration that has been made by this section is to declare a Hindu female "full owner" of the property. The

explanation added to Sub-section (1) of Section 14 points out that this would be the effect no manner how the property- was acquired as enumerated in the declaration. What has been done by the Division Bench of this Court in Yamunabai''s case AIR 1960 Bom 463 and by the Supreme Court in Punithavalli Ammal Vs. Minor Ramalingam and Another, is to give full effect to this expression "full owner" used by the Legislature. "Full Ownership" of a widow is inconsistent with the traditional legal position of that widow in a joint Hindu family. There is deliberate departure by the Legislature from the pre-existing Hindu Law with a view to improve the economic condition of a female Hindu. It is, therefore, necessary to interpret the provisions of Section 14 in such a manner as to least impinge upon the broad spirit of the ameliorative provisions contained in Section 14(1) of the Succession Act. Some of the observations of the Supreme Court in Tulsamma''s case AIR 1977 SC 1944 are worth noting. They have been reproduced with approval in a subsequent judgment of that Court in Bai Vajia (Dead) by Lrs. Vs. Thakorbhai Chelabhai and Others, . Those observations are as follows:

"If (Section 14(2)) excepts certain kinds of acquisition of property by a Hindu female from the operation of Sub-section (1) and being in the nature of an exception to a provision which is calculated to achieve a social purpose, by bringing about change in the social and economic position of women in Hindu society, it must be construed strictly so as to impinge as little as possible on the broad sweep of the ameliorative provision contained in Sub-section (1). It cannot be interpreted in a manner which would rob Sub-section (1) of its efficacy and deprive a Hindu female of the protection sought to be given to her by Sub-Section (1)"

21. Viewed in that manner, it appears that the full ownership conferred upon a Hindu female would have all the attributes of full ownership as is understood normally in law. In our view the first consequence is that there is no question of reversion after the death of the Hindu female and she would constitute a fresh stock. Succession to this property will be governed by the provisions of the Hindu Succession Act and not by the Shastric Hindu Law. Being full owner she is entitled to dispose of the property by transfer inter vivos or by Will. In other words, according to us this property of the Hindu female can well be compared with the self-acquired property of a Hindu male. If a son adopted by a Hindu male person could not claim any right in the self-acquired property, how can a son adopted by the Hindu female now claim a right by birth in this independent property of the female which is akin to the self-acquired property t It is being conceded on all hands that the adoption after the Succession Act operates prospectively and not retrospectively. There is no relation back. On the date of the adoption there is no joint family property in existence in which he could claim any interest by birth. In doing so, the adopted son is not deprived of the status given to him of a natural born son as Section 12 of the Hindu Adoptions and Maintenance Act, 1956 provides. Where the natural born son could get a right by birth, the adopted son would. If the natural son dad no right by birth, the adopted son cannot also claim any such right. According to us, the effect

of vesting of the full title in the Hindu female by the provisions of Section 14(1) is to substantially change the nature of the property and the status of the adopted son. All this seems to be obvious and has been assumed by this Court as well as by the Supreme Court when the judgments were delivered either in Yamunabai''s case AIR 1960 Bom 463 or in Punithavalli Ammal Vs. Minor Ramalingam and Another, .

22. The learned Advocate-General, who only partly supported the judgment conceded that the doctrine of relation back is not available. However, he says that the adopted son, in the circumstances of the present case, could still get a right to claim partition from his mother. He also concedes that there was not to be divesting of the property but what he implies by this expression is slightly different. According to him, in all the judgments which have dealt with that proposition under the Shastric Hindu Law it was always conceived that divesting relates to the entire property. In that sense there will not be any divesting of the property from the widow. However, he merely wants to say that the son''s right to claim partition in half the property would no amount to divesting of the entire property from the widow. We are unable to agree with this reasoning. Divesting need not always be in respect of the entire interest It could be of a partial interest also. To say that the widow is now the full owner and still has to part with a portion of that property is to blow hot and cold in the same breath. The moment by some logic she is being deprived of the property or a portion thereof, her full ownership is obviously affected. Any interpretation, which will thus adversely effect the benefit which is conferred by the Legislature upon her, does not seem to be permissible. We also see no reason why such an artificial approach should be adopted which is inconsistent with the plain reading of the statutory provisions.

23. When the learned Advocate-General all the while referred to the right of partition of the adopted son, we told him that in order to enforce partition, it is always assumed that the person claiming partition has a prior right in the property itself. He also stated that the partition does not amount to transfer or divesting. That may be so because both the parties to the partition are prior owners and they merely crystallise their respective shares. We repeatedly asked him to point out where and how the adopted son gets a prior interest which is to be enforced by partition. No reply was given to us directly though some attempt was made to explain away his own theory. The only way in which the right in an adopted son could be created on the date of adoption is to get interest by birth, whether it is natural or a civil birth, through the mechanism of adoption. If that right is not available, there is no prior right, and there is no question of enforcing any partition by an adopted son. This approach again indirectly revived the concept of relation back without actually saying so with the modification that in respect of the half share that remains with the widow, she would be the full owner thereof. This would amount to defeating the provisions of 5. 14 and to set the clock back which is contrary to the provisions of this progressive piece of legislation made to ameliorate the economic condition of Hindu females. In our view, therefore, after 1956 the

situation has entirely changed when the Hindu female is declared to be the full owner of the property. Such a title is inconsistent with the earlier provisions of the Shastric Hindu Law where the woman was merely holding the joint family property for the time being with life interest and which right was always defeasible by the introduction of a male heir in that family.

24. Yet another argument was sought to be raised by the learned Advocate-General. He said that Section 12 of the Hindu Adoptions and Maintenance Act declares that from the date of adoption all the rights of the child in the family of birth would be deemed to be severed and replaced by those created by the adoption in the adoptive family. If that is so, the child will lose its right in the property of the genitive family and would get nothing in the family of adoption. He posed a question whether the Legislature intended to deprive the adopted child of the property in both the families. We do not think that the question can be posed in the manner in which the learned Advocate-General did. The correct approach is that the position of the Hindu female was sought to be improved. Adoption was an integral part of the Hindu Law and the Legislature does not want to deprive the members of the Hindu family of the right of adoption. According to the traditional Hindu Law, a son was being adopted only for the spiritual benefits and for continuation of the line of the adoptive father. That position is not affected by the codified law. If, in a given situation, the adopted child was not likely to get any property, and the father or mother giving the child in adoption wanted to see that the child also gets material benefit from the adoptive family special provision has been made in Section 13 of the Hindu Adoptions and Maintenance Act, 1956. It is, therefore, obvious that the adopted son need not be deprived of property in both the families and it is possible for the person giving a child in adoption to make specific provisions hi the matter of property which should be available to the adopted child. In any case such distant moral considerations cannot be permitted, to interfere with the plain language of the provision. We are thus satisfied that the provisions of Section 14(1) of the Hindu Succession Act have brought about a positive change relating to the ownership of property by a Hindu female and the character of that property in her hands.

25. In mat case of Hirabai and Another Vs. Babu Manika Ingale, , the Division Bench has used the expression "prospective furthering" in paragraph 23 of the report It is sought to be explained that the doctrine of relation back is not available in view of me provisions of Section 12(c) of the Hindu Adoptions and Maintenance Act. However, the same section declares that the adopted child would be deemed to be the child of the father or mother for all purposes. This tantamount to replacing the principle of relation back by the intendment of "prospective furthering". This seems to be a new expression coined and such a concept is not to be found anywhere else. We have already explained that where the adopted son had no right in the self acquired property even under the old Hindu law, how could he get it under the now codified Hindu law when there Is clear intendment to the contrary? Even today if an adoption takes place in a joint Hindu family, the adopted son is born on that day and

is entitled to all rights and privileges as from that date. The declaratory provision of Section 12 of the Hindu Adoptions and Maintenance Act is not meant to give right by birth to an adopted son in the self-acquired independent property of the adoptive father. Since the Hindu female becoming full owner u/s 14(1) of the Succession Act is to be equated to such an adoptive father, the adopted son cannot be given any right in that property. To do so would amount to giving a right to the adopted son which has never been given under the Shastric Hindu Law. We do not think any such consequence is conceived of by the Legislature while enacting the two laws, viz. the Hindu Succession Act and the Hindu Adoptions and Maintenance Act The expression newly coined, whatever it means, does not seem to depict the correct legal position as sought to be depicted by the codified law.

26. As we have pointed out, the recent judgment in Hirabai and Another Vs. Babu Manika Ingale, does not represent the correct law. We may incidentally refer to some of the judgments on which reliance is placed and which are distinguished by the learned Judges of the Division Bench. One of the observations made by them is that the judgment of the Supreme Court in Shripad Gajanan Suthankar Vs. Dattaram Kashinath Suthankar and Others, shakes the authority of Punithavalli Ammal Vs. Minor Ramalingam and Another, . The learned Advocate General conceded before us that he was unable to subscribe to such a view. A mere look at the facts of Shripad''s case will show that the Supreme Court was called upon to deal with a situation which related to events which were prior to 1956. The first paragraph of that judgment shows that the Supreme Court was to deal with a point under the Hindu taw bearing on an adoption by a widow and its impact on an earlier partition in the coparcenerall prior to Hindu Succession Act 1956--which arose for decision. The partition as well as the adoption were both before the 1956 Act came into force and the Supreme Court was never concerned with the situation which may arise after the Hindu Succession Act came into force. The quotation adopted by the learned Judges for observing that the authority in Punithavalli Animal''s case is shaken relates to an entirely different point. While dealing with the doctrine of relation back, some observations were made in Shri-pad''s case as to how far that doctrine could be stretched. In that context they have observed that the judgment in Punithavalli Animal''s case seems to have gone a little too far. However, when it comes to the operation of that doctrine after the Succession Act came into force, the observations are very clear. They say :--

"It is unlikely that a similar question will arise hereafter since Section 4 of the Hindu Succession Act, 1956 has practically swept off texts, rules and the like in Hindu law, which were part of that law in force immediately before the commencement of the Act, till provisions have been made for such matters in the Act. Since on the husband''s death the widow takes an absolute estate, questions of the type which engage us in this appeal will be stilled forever."

In our view the observations of the learned Judges that Shripad''s case to some extent shakes or affects the authority of the judgment in Punithavalli Animal''s case on the present question are not correct. The learned Judges have also observed in the same paragraph 30 of the report that the nature of the property with which the Supreme Court was dealing in Punithavalli Ammal''s case is not clear. This observation is made to indicate that if the property inherited in that case was the self-acquired property of the propositus, a situation similar to the one before them was not being dealt with by the Supreme Court. In order to find out what were the properties in the hands of Somasundara Udayar, viz. whether ancestral joint family property or self-acquired property, we examined the facts from the report of the Madras High Court judgment from which Punithavalli Ammal''s case in Punithavalli Ammal Vs. Minor Ramalingam and Another, was an appeal. Even in that judgment we did not get any further information. We will presently point out how this is not at all relevant for deciding the issue. However, the learned Judges also distinguished the earlier judgment of this Court in Yamunabai''s case AIR 1960 Bom 463 in the same manner. The property involved in that case was the Inam estate in the erstwhile State of Kolhapur. The learned Judges observed that Yamunabai''s case was distinguishable because the property that was being considered was not obviously the property of the characteristics of the property of coparcenery or the property of the joint Hindu family. It is difficult to appreciate these observations. An Inam property is ordinarily heritable or hereditary property the settlement in respect of which had taken place as early as in 1852. Even apart from that, a little effort to investigate the facts would have shown that in the earlier judgment of this Court the facts have been very clearly narrated. It is stated that one Harihar Pandit was the hereditary priest of the ruling family of the former State of Kolhapur. The Inam property was thus granted, for these services to the family which was hereditarily rendering services as a priest to the ruling family. Can there, therefore, be any doubt that this was ancestral property inherited from generation to generation and, therefore, it would be joint Hindu family in the hands of a coparcenery consisting of the male members of the Pandit family. In that view of the matter Yamunabai''s case was on all fours with the facts before the learned Judges and being a prior judgment of the Division Bench was binding upon them. If any doubt was entertained the proper course would have been to make a reference to a larger Bench rather than distinguish the case by observations which are not supported by facts. Even that course does not seem to be open to that Bench because the matter was not restricted to the view taken by this Court alone. That view of this Court was already confirmed by the Supreme Court in Punithavalli Ammal''s case. Assuming that in Punithavalli Ammal''s case the property of Somasundara Udayar was his self-acquired property, it seems to make no difference for the purpose of the ultimate finding, given by the Supreme Court. They approved the judgment of this Court in Yamunabai''s case which means that where ancestral joint family property of coparcenery was involved, the matter was correctly decided by this Court. With this kind of observation of the Supreme Court the question was

not open al all for taking a contrary view.

27. Our discussion till now will show that the Legislature has brought about a categorical change by introducing the provisions of Section 14(1) of the Hindu Succession Act. The female holder is now made full owner and has the effect of changing the nature of the property. This will always be the effect irrespective of the nature of the property which the woman possessed as a limited owner till June 1956. The earlier nature of that property thus becomes irrelevant. Once that position is appreciated, it does not become necessary to investigate the nature of the property which came in the hands of the widow. If a Hindu male possessed only self-acquired property and died leaving a widow, the position would not be different. Till 1956 June his widow would succeed to that property under the Mitakshara law and would take a limited estate known as Hindu widow''s estate. If she adopts and thus gets a son in the nature of law, so far as the son is concerned the property of his adoptive father would be ancestral property in his hands. The father having died intestate like the natural son, the adopted son would inherit that property. The widow would be effaced and by the (principle of relation back, he would get the father''s property. All these consequences of Shastric Hindu Law have now been totally effaced by the inconsistent contrary provision of Section 14(1) of the Hindu Succession Act. That precisely is the effect of this statutory provision as is laid down by Section 4 of that Act. We do not think, therefore, that the nature of the property had any particular relevance while construing the provisions of Section 14(1) of the Hindu Succession Act.

28. The learned Judges draw support for their conclusion from the judgment of the Supreme Court in the case of Smt. Sitabai and Another Vs. Ramchandra, . The facts in that case show that there was a coparcenery between two brothers Dalichand and Bhagirat. The property in their hands was admittedly ancestral joint family property. Plaintiff Sitabai was the widow of Bhagirat who pre-deceased Dalichand, some time in 1930. Dalichand died on March 30, 1958. Sometime before his death Sitabai adopted plaintiff No. 2 Sureshchand and an Adoption Deed was executed on March 4, 1958. In a litigation raised by Sitabai as plaintiff No. 1 and Sureshchand as plaintiff No. 2, one of the questions related to the rights of Sureshchand to claim title to the property of the family. On these facts, one of the questions raised was whether the adopted son Suresh was the son of the adoptive mother alone or also of the deceased Bhagirath. This was because the adoption was on March 4, 1958 after the Succession Act and the Hindu Adoptions and Maintenance Act were passed. The conclusion arrived at in that behalf is that he was the son of both the mother and the father to whom the adoption has taken place. A further finding has been given that the joint family still continued after the death of Bhagirath though Dulichand was the sole surviving male member in that family. The adoptive mother Sitabai merely had the right of maintenance and had no right to property at all as her husband had died before 1937. In the circumstances, on the date of adoption with Dalichand and Sitabai being the members of a joint Hindu family, the adopted

son who was the son of Bhagirath as well as Sitabai got a right by birth in the joint Hindu family property -- may be from the date of his actual adoption. It is in that view of the matter that the right of the adopted son was upheld as a sharer in the joint family property. We wonder what help can be derived from that judgment for considering the situation where the only person surviving was a widow who becomes full owner of the property under the provisions of the Hindu Succession Act and thereafter adopts a son. There is no doubt that the son will be of the mother as well as of the father but as there is no joint family property in existence on the date of his adoption he cannot claim on the date of his artificial birth in this family any right in the property.

29. The learned Judges have also derived some support from the observations in the case of Commissioner of Income Tax, Madras Vs. Rm. Ar. Ar. Veerappa Cheitiar, The observations of the Supreme Court are that in order that there should be a joint Hindu family, it is not predicated that there must always be a male member in the family. So long as the property which was originally the joint Hindu family remains in the hands of the widows of the members of the family and is not divided among them, the joint family continues. This statement of law relates to the situation of that family in the year 1947 when the codified Hindu law was not even thought of. That position of Hindu law is clear enough so far as the pre-codified Shastric Hindu law is concerned. There was no occasion for the Supreme Court in that case to consider the effect of Section 14(1) of the Hindu Succession Act and the vesting of the full title in the widow of the last surviving coparcener. We do not think that the judgment has any relevance in deciding the issue before us.

30. Thus, it would be clear that on the view we take the case of Hirabai and Another Vs. Babu Manika Ingale, is wrongly decided and is overruled. The legal position has already been formally established by the Supreme Court judgment in Punithavalli Ammal Vs. Minor Ramalingam and Another, which confirmed the view of this Court in Yamunabai''s case AIR 1960 Bom 463. If that is the correct legal position, the adopted son before us, viz. Jitendra has no right whatsoever in the property possessed by Kesharbai as on die date of his adoption. Kesharbai was the full owner of that property and continued to be so till her death. If at all Jitendra has any right in the property of Kesharbai it is only by way of inheritance after her death as an heir under the Hindu Succession Act The view taken by the learned Divisional Commissioner, therefore, seems to be correct Kesharbai has been properly declared as the sole owner of the property and on that footing the declaration of the surplus land is obviously correct and proper. The question formulated by us earlier is thus answered in the negative. The writ petition thus fails and the rule is discharged. In the circumstances of the case, there will be no order as to costs.

31. Petition dismissed.