Annasaheb Bhausaheb Patil Vs Gangabai Annagonda Patil

Court: Bombay High Court

Date of Decision: Oct. 14, 1970

Acts Referred: Hindu Succession Act, 1956 â€" Section 14, 14(1), 14(2), 6, 8

Citation: (1971) MhLj 657

Hon'ble Judges: M.H. Kania, J; D.G. Palekar, J

Bench: Division Bench

Advocate: Prakash S. Shah, for the Appellant; N S. Shrikhande and L.G. Khare for Respondents Nos. 2 to 6 and K.J. Abhyankar, for the Respondent

Final Decision: Allowed

Judgement

Palekar, J.
This is an appeal by the plaintiffs whose suit for possession has been dismissed by the learned Joint Civil Judge, Senior

Division, Kolhapur. The suit was for the recovery of possession of some agricultural lands and a house in village Shirati in Kolhapur district. The

lands are about 35 acres in extent and are assessed to land revenue of Rs. 211-5-9.

2. The plaintiffs and defendant No. 1 are the daughters of one Appa alias Jangonda and their mother''s name was Hirabai. Appa was the only son

of one Devgonda Devgonda had a brother named Jingonda, who appears to have been deaf and dumb. Defendants Nos. 2 to 6 are the grandsons

of this Jingonda, being the sons of Nemgonda alias Balgonda.

3. Jingonda died sometime before Devgonda leaving behind him his son, Nemgonda alias Balgonda. In spout 1902 Devgonda and his son Appa

went on a pilgrimage. When they were on the pilgrimage Devgonda died first in 1902 and Appa soon thereafter So, Devgonda''s branch in 1902

consisted of Appa''s widow Hirabai and her three daughters viz. the plaintiffs and defendant No. 1. It appears that the two brothers Devgonda and

Jingonda were members of a Hindu joint family and it can, therefore, be said that after the death of Devgonda, Jingonda and Appa, the only male

member of the joint family was Nemgonda alias Balgonda. All the properties of the family, many of which had been acquired by Devgonda, were

in the possession of Devgonda''s branch, and, naturally, on the death of Devgonda and Appa in 1902, Hirabai came into possession of all the

agricultural lands belonging to the family and also the houses. Disputes arose between Nemgonda and Hirabai and the same were referred to an

Arbitrator, who gave his award on October 15, 1903. This award was filed in Court and a decree in terms of the award was passed on October

24, 1903, Broadly, the result of this decree was that, out of about 130 acres of lands and six houses and house-sites, 65 acres of lands and one

house were allotted to Hirabai. Out of the 65 acres, 30 acres were ear-marked for the provision of maintenance and marriage of the three

daughters and the rest of the property was ordered to be retained by Hirabai for life with certain restrictions. The thirty acres of lands given to the

daughters were by way of absolute gift. But, so far as the lands allotted to Hirabai were concerned, they were to be in her possession only for her

lifetime where after they were to revert to Nemgonda.

4. Accordingly, the daughters obtained possession of their thirty acres and there is no dispute about them before us. The dispute is confined to the

remaining thirty five acres and the house. Hirabai was in possession of this property, which is the subject matter of the suit, till her death on

February 25, 1967. At that time Nemgonda was dead and his sons, viz. defendant Nos. 2 to 6, were in the village. They got their names entered in

the revenue records in respect of this property and obtained possession of the same.

5. The plaintiffs, who are two daughters out of the three daughters of Hitabai, filed this suit for possession of these properties claiming title to the

same through Hirabai. They alleged that Hirabai, who was the limited owner of these properties under the award, had become the full owner of the

same after the commencement of the Hindu Succession Act, 1956 and, therefore, the two plaintiffs and their sister, defendant No. 1, were entitled

to succeed to the properties of their mother after her death. They further alleged that the suit properties had been allotted to Hirabai by the award

in lieu of maintenance.

6. Defendants Nos. 2 to 6 contested the suit and the principal contention with which we are now concerned is, whether Hirabai got full ownership

of these properties after the commencement of the Hindu Succession Act, 1966. It is not disputed that if Hirabai is held to have become the full

owner of the properties by reason of section 14 of the Hindu Succession Act, 1956 (hereinafter referred to as the Act), the plaintiffs and defendant

No. 1 would be her heirs and, therefore, entitled to the possession of the said properties. On the other hand, if Hirabai had not become the full

owner of the properties, her estate being limited to her lifetime, then under the terms of the award the suit properties were liable to revert to

Nemgonda and his branch in which case defendants Nos. 2 to 6 would be entitled to the suit properties. The learned Civil Judge held that by

reason of the award-decree dated October 24, 1903, Hirabai was merely constituted a limited owner of the properties for her lifetime within the

contemplation of section 14(2) of the Act and, therefore, neither the plaintiffs nor defendant No. 1 was entitled to those properties. It is on that

ground that he dismissed the suit.

7. The plaintiffs have, therefore, come in appeal and Mr. Shah, appearing on their behalf, submits that the learned Civil Judge erred in holding that

the case fell within section 14 (2) instead of section 14 (1) of the said Act. His contention is that by reason of the award-decree Hirabai was

constituted a limited owner and as she was in possession of these properties at the commencement of the Act, she became the full owner thereof.

Mr. Shah further contended that sub-section (2) of section 14 of the Act had no application to this case, because the award decree did no more

than define and recognise Hirabai''s right to the family properties for her maintenance According to Mr. Shah, the said sub-section comes into play

only when a restricted estate has its origin, for the first time, in the grant, decree or award, and the grant, decree or award do not merely give

expression to a pre-existing or antecedent right to or against the family properties. On the other hand, it is contended by Mr. Shrikhande,

appearing on behalf of the contesting respondents, that the learned Judge was right in holding that the case fell within sub-section (2) of section 14

of the Act and not sub-section (1) thereof. That is the only point at issue before us.

8- Section 14 of the said Act is as follows:

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.

(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.

The object of this particular enactment is clear. The object is to assure equality of rights to property to all Hindu males and females and to remove

the artificial disparity in the capacity to hold property imposed by the Hindu law on the Hindu female. In circumstances where a Hindu male was

entitled to obtain full ownership of the property, a Hindu female could not be condemned to hold properly as only a limited owner because of the

restrictions imposed on her by the Hindu law. On the other hand, where in circumstances it was lawful for a Hindu male to hold property as only a

limited owner it was not the intention of the Legislature that a Hindu female should hold the property as a full owner. Sub-section (1) of section 14

of the Act takes care of the former while sub-section (2) takes care of the latter.

9. For the purpose of sub-section (1) we must be concerned with property which is in the possession of a Hindu female after the commencement

of the Act of 1956. That Act came into force on June 17, 1956. If such property was acquired by her, whether before or after the commencement

of the said Act, it would be held by her as a full owner and not as a limited owner inspite of the restrictions placed by the Hindu law. Then there is

an explanation of the word ""property"" referred to in sub-section (1). By this explanation all kinds of properties are attempted to be included in

subsection (1). Though the explanation purports to give an inclusive meaning of the word ""property"" it is really an exhaustive explanation, because

after enumerating the various kinds of properties acquired by a Hindu female, traditionally mentioned in all the text books on Hindu law, the

explanation includes property acquired by a Hindu female ""in any other manner whatsoever"". To make the explanation all pervasive it also

includes property held by a Hindu female as stridhana, because although it is well known that under the Hindu law stridhana property is the

property of the female with absolute ownership therein, under certain schools of the Hindu law a few types of properties though regarded as

stridhana are not disposable by the wife without the consent of her husband. The explanation, thus, brings under its purview all properties

traditionally acquired by a Hindu female in which merely by reason of the incidents of the Hindu law she has limited ownership In other words, sub-

section (1) read with this explanation provides that any property, howsoever acquired and in possession of a Hindu female after the

commencement of the Act shall be held by her as a full owner in all cases where she formerly held merely limited ownership. As a matter of fact,

this sub-section proceeds on the basis that there are several categories of properties of which a Hindu female, under the provisions of the Hindu

law, is merely a limited owner. By this enactment her rights are enlarged and wherever under the Hindu law she would merely obtain limited

ownership, the would after the commencement of the Act, obtain full ownership.

10. Sub-section (2) of section 14 of the Act comes by way of exception as is clear from the words with which the sub-section itself commences. If

sub-section (1) had stood alone, a Hindu female would obtain full ownership in all properties, however partial or limited interest in them a grant

may create in her favour. If, for example, by a will or a gift a life interest is created in her favour with the remainder vesting in another, Sub-section

(1) would have the effect of making her the full owner thereof and destroy the remainder. This result, however, is not intended. In similar

circumstances, a life interest created in a Hindu male would give him no more than a life interest and it would impair the principle of parity of rights

between the Hindu male and female, if a similarly worded grant gives a Hindu male a life interest but a Hindu female an absolute estate. To prevent

this anomaly sub-section (2) is enacted. It emphasizes that in all cases where a grant can lawfully create a limited estate in favour of a Hindu male

grantee, it can equally do so in the case of a Hindu female grantee and the general rule of sub section (1) would have no application. It is in that

sense that sub-section (2) is read as an exception to sub-section (1).

11. There is consensus of judicial opinion with regard to the ambit of sub-section (2) of section 14 of the Act. It covers only those cases of grants

where the interest in the grantee is created by the grant itself or, in other words, where the gift, will, instrument, decree, order or award is the

source or origin of the interest created in the grantee. Where, however, the instruments referred to above are not the source of interest created but

are merely declaratory or definitive of the right to property antecedent-ally enjoyed by the Hindu female, sub-section (2) has no application; and it

matters not if in such instruments it is specifically provided in express terms that the Hindu female had a limited estate or that she shall not alienate

the property or that the property would revert on her death to the next reversioner. Such terms are merely the reiteration of the incidents of the

Hindu law applicable to the limited estate. (See P. Pattabiraman v. Parijatham Ammal A I R 1970 Mad 257. and the cases referred to in paras. 2

and 2 of that judgment).

12. It, therefore, follows that in cases arising out of the Hindu Women''s Rights to Property Act, 1937, which on the death of a coparcener gave a

Hindu widow a share in the coparcenary property, the Hindu woman''s limited estate would be enlarged into full ownership inspire of any

subsequent instrument, award or decree declaring or redefining her rights as a limited estate. (See Raghunath Sahu and Another Vs. Bhimsen Naik

and Another, , Sasadhar Chandra Day and Others Vs. Sm. Tara Sundari Dasi and Others, , V. Sampathkumari Vs. M. Lakshmi Ammal and

Others, and Lachhia Sahuain Vs. Ram Shankar Sah,).

13. In cases where a coparcener died before the Hindu Women''s Rights to Property Act, 1937 came into force, the widow did not have normally

a share in the joint family property but only a right to be maintained out of the joint family property. In numerous instances this light was assured to

her by allotting property to her for life whether under an instrument, award or decree or even by an oral arrangement. The difficult question which

arises in such a case is whether the widow in possession of such properties on the date of the commencement of the Act of 1956 gets full

ownership to these properties under sub-section (1). There is divergence of judicial opinion on this question between the various High Courts,

some holding that she does and others holding that she does not. And that is the precise question which arises in the present case. Those cases

which hold that the Hindu female gets full ownership proceed on the footing that a right to be maintained from the family property is a right

crystallised, declared and recognised in the instrument, award or decree, having been in existence antecedent to those documents, and hence not

covered by sub-section (2) of section 14 of the Act. (See Yamunabai Gangadhar v. Parappa 1068 Mah. L J 828 = (1968) 70 Bom. L R 611,

Gadam Reddayya Vs. Varapula Venkataraju and Another, , Sumeshwar Mishra and Others Vs. Swami Nath Tiwari and Others, and Sharbati

Devi v. Hiralal A I R 1964 P&H. 114.).

14. Other cases hold that her right to be maintained out of the family property was not ""a right to property"" which, according to them, she gets for

the first time under the instrument, decree or award and hence she falls under sub-section (2) of section 14 of the Act. (See Gurunadham v.

Navaneethamma A I R 1967 Mad. 429. and Narayan Patra and Others Vs. Tara Patrani and Another,).

15. The first question for decision is whether Hirabai was a limited owner of the suit properties on the date of the commencement of the Act of

1956. For the present it may be conceded that she had no title to these properties before the date of the award except to the extent of a

possessory lien for her maintenance which is recognised in this State for more than a hundred years. (See Yellawa v. Bhimangavda I L R (1890)

18 Bom. 452). It has been held in that case that the Court will not allow the heir to recover family property from a widow entitled to be maintained

out of it without first securing a proper maintenance for her. This position in law has been recently recognised by the Supreme Court in Shrimati

Rani Bai Vs. Shri Yadunandan Ram and Another, . where it is pointed out that the widow was entitled to remain in possession if she could

establish that she had entered into possession by virtue of her claim or right to maintenance until the person laying the claim to the estate made

proper arrangement for payment of maintenance to her. But, after the date of the award, Hirabai was undoubtedly constituted a limited owner with

some restricted powers to alienate the properties. It would appear from the award that she was entitled to remain in possession for her lifetime, the

right to alienate being confined to raising of a loan on the security of the properties for the purpose of paying Government revenue.

16. It is true that the award (Exh. 67) dated October 15, 1903 does not in so many words say that the suit properties were given to Hirabai in lieu

of maintenance. But, we have no doubt that this was the case. Nemgonda, who was the other party to the dispute, had specifically asked in the

plaint which he filed before the arbitrator that maintenance should be provided for Hirabai and all the properties which were in Hirabai"s

possession should be handed over to him. The arbitrator, while dealing with this aspect of the case, observed as fallows:

Devgonda was the Karta and an honoured gentleman. It would appear that since Jingonda was dumb he was not useful to conduct the day-to-day

affairs. Since Devgonda was the Karta, both the parties agreed that it was Devgonda himself who developed the income of the properties The

plaintiff (Nemgonda) fully admits that it was Devgonda who retained the Patilki Watan in the family after putting forth great efforts in the dispute

that had arisen. On the whole, there is no dispute before me that Devgonda was the Karta. The defendant (Hirabai) is the daughter-in-law of a

such Karta member and to pass an order merely to give her maintenance as requested by the plaintiff (Nemgonda) would amount to ignoring the

real position of those neatest to the man who had alter great endeavours developed the properties. Therefore, having regard to the status of

Devgonda and the relationship between Devgonda and the defendant (Hirabai) I do not desire to give to the defendant (Hirabai) bare maintenance

as if she ii an unsheltered woman.

Reliance was placed upon these observations made by the arbitrator in the award to contend that the award does not really give these properties

to Hirabai in lieu of maintenance but that the award is an anomalous instrument wherein the lights of the parties were for the first time decided. We

are unable to accept this submission. So far as could be gathered from the award it would appear that while Hirabai was saying that she should get

all the properties and maintenance should be given to the other side, Nemgonda was contending that he should get all the properties from Hirabai

and Hirabai should be merely paid some maintenance. That was the issue which was before the arbitrator. He found that they were all members of

a joint family and against that background he had to pass the award. Nemgonda being the only surviving male coparcener could not be side-

tracked by merely providing him with maintenance. On the other hand, having regard to the fact that Hirabai under the Hindu law would be only

entitled to maintenance, the arbitrator thought that it would be unfair to give her merely a pittance for her maintenance as a widow in the joint family

and, therefore, he decided to make a liberal provision for her in lieu of her maintenance. Having regard to the manner in which the family properties

had been increased and developed by the personal efforts of Devgonda, the arbitrator thought that Hirabai deserved to be provided on a liberal

scale. As a matter of fact, a specific allegation was made in the plaint in the present suit that the suit properties were given to Hirabai under the

award in lieu of maintenance, and we do not find any specific denial of the same in the written statement. We. therefore, hold that the suit

properties had been allotted to Hirabai in lieu of her maintenance which is also the finding of the learned trial Judge.

17. Thus we find that the suit properties were allotted to Hirabai under the award in lieu of maintenance for life with a very restricted power of

alienation only in cases where the land revenue fell in arrears. The explanation appended to sub-section (1) of section 14 of the Act assumes that

property acquired by a Hindu female in lieu of maintenance is property of limited ownership, a concept not inconsistent with the Hindu law. Gupte

in his book on the Hindu law, 2nd ed., at p. 565 in para. 44 has stated as follows:

Although the division of property into stridhana and non-stridhana is based upon certain conceptions peculiar to Hindu law it corresponds to the

division of property into absolute and limited. Absolute ownership means and connotes that (1) the owner has certain unqualified rights over the

property such as (A) the exclusive right to its possession, (B) the right to its management, (C) the right to its exclusive enjoyment, and (D) the right

of disposition by an act inter vivos or will, and (2) on the death of the owner the property devolves by succession on his heirs. Where any of these

essentials (of the content) of absolute ownership is lacking, the property is not regarded as absolute but limited. Limited property would therefore

be property the ownership of which is limited in some way or other irrespective of the manner in which it may be limited in any particular case.

We have no difficulty, therefore, in holding that on the date of commencement of the Act of 1956 Hirabai was a limited owner within the

contemplation of sub-section (1) of section 14 of the Act. It would then follow that Hirabai was entitled to become the full owner of the suit

properties on that date in which case on her death after that date, her daughters would be entitled to inherit the suit properties.

18. It is, however, contended by Mr. Shrikhande that the case falls within the exception embodied in sub-section (2) of section 14 of the Act. His

contention is that the award in this case creates a restrictive estate within the meaning of sub-section (2) and not a limited estate or limited

ownership an expression which is to be found in sub-section (1). He contends that this is a restrictive estate because Hirabai was less than a limited

owner and for this he refers to the restrictive terms of the award which lay down that Hirabai''s right to alienate was strictly restricted to the

purpose of raising a loan to pay the land revenue. The argument assumes that a restricted estate is different in quality from limited ownership. That

is not so. ""Restricted estate"" is a generic term by which all kinds of limited ownerships are covered. The expression ""limited ownership"" has been

used in sub-section (1) of section 14 of the Act, because that is an expression generally found in the text books on Hindu law and has almost

acquired a technical connotation in connection with the estate of a Hindu female. Sub-section (2), on the other hand, does not want to move within

the technical concept of ""limited ownership"". Therefore, sub-section (2) has used a more generic term ""restricted estates"", which in its wide ambit

can take into account all limited ownerships within sub-section (1). Indeed, the expression ""limited ownership"" within the Explanation appended to

sub-section (1) accounts for a wide variety of cases as shown by Gupte in the passage already referred to. They range from Stridhana on the one

hand, to acquisition in lieu of maintenance, on the other. An absolute estate may be restricted or limited in a variety of ways in point of duration,

enjoyment, disposal or the like, and all such cases are covered by the Explanation without differentiating between the several kinds of restrictions.

In our opinion, limited ownership is also restricted ownership and every case of limited ownership will fall within the meaning of ""restricted estate

in sub-section (2).

19. Mr. Shrikhande next contended that the words ""award or decree or order of a Court"" are not specifically mentioned in sub section (1) and,

therefore, where a limited ownership or restricted estate is created by an award or decree, the case entirely falls within sub section (2) and not tub-

section (1) of section 14 of the Act. We are unable to accept this submission. It is true that sub-section (1) does not in terms refer to an award or a

decree of a civil Court, But the Explanation to sub-section (1) is wide enough to include property acquired under an award or a decree. The

property as explained therein, not only includes the several kinds of acquisition by a Hindu female under the Hindu law but the Explanation winds

up by providing that property acquired ""in any other manner whatsoever"" by the Hindu female would be property referred to in sub-section (1).

The expression ""in any other manner whatsoever"" is wide enough to include property acquired under an award or a decree. Nor is there any

substance in the further contention of Mr. Shrikhande that the words ""the decree or award"" are not mentioned in sub-section (1) but mentioned in

sub-section (2) because of the higher respectability which is attached to a decree or award. They are adjudications by either a domestic Court or

by a civil Court and, therefore, they stand on a higher footing. That is the reason why Mr. Shrikhande says that property acquired under a decree

or award was intended to be excluded from the operation of sub-section (1), We do not really see why a decree or award passed on an

agreement between the parties or on the basis of a settlement between them should have greater value than a private arrangement amicably arrived

at. Moreover, sub-section (2) does not provide for acquisitions made only under an award or a decree but it also makes provision for the property

acquired under a gift or will or any other instrument. They are all of the same quality and the only purpose for which sub-section (2) was enacted

was to make it clear that where under these several documents a new restricted right to property is created for the first time, sub-section (1) will

have no application to such a case.

20. That brings us to the really vexed question in the present case. Mr. Shrikhande does not dispute that when a limited or restricted estate

apparently created by the means referred to in sub-section (2) is only a redefinition or recognition of an antecedent right to property, sub-section

(1) will not cease to have effect. In such a case, he concedes that it will not be possible to argue that the limited interest created in favour of the

grantee has its foundation or origin in the grant itself. The grant, instrument or decree will have only to be regarded as working out the Hindu

female"s antecedent right to property which is thereby recognised. He, however, contends that where a Hindu female has no right or interest

directly to any property antecedent to the documents referred to in sub-section (2), there is no question of that right being recognised in the

documents and, therefore, if a restricted estate is given by these documents they alone should be regarded as the foundation or source of the grant

and such a grant would fall under sub-section (2). According to Mr. Shrikhande, Hirabai being a widow in the joint family had no direct interest in

or right to the family properties prior to the award. Her right was confined to a mere claim for maintenance out of the joint family properties. Hence

though her right of maintenance was antecedent to the award it was not a right to any property, that is to say, she had no proprietary right to any

property, and hence the right to the limited estate created by the Award hat its origin in the award itself. Therefore Mr, Shrikhande contends,

Hirabai"s case falls under sub-section (2) of section 14 of the Act. In other words, the emphasis, according to Mr. Shrikhande, is on the question

whether the antecedent right of the Hindu female is a proprietary right or not. If it is not a proprietary right, the right which is given under the grant

in sub-section (2) would be a restricted right having its origin in the grant itself.

21. The right of a Hindu widow to be maintained out of joint family properties has, amongst others, the following characteristics:

1. Under Hindu law where a person has succeeded by survivorship to the share of the deceased coparcener, he takes it subject to the burden of

maintaining the widow and unmarried daughters of the deceased coparcener. The burden attaches to the property. The holder of such interest for

maintenance amounting as it does to a burden on the property is entitled as a matter of right to ask the Court to create a formal charge on such

property. (See The Secretary of State for India Vs. Ahalyabai Narayan Kulkarni,).

2. A widow is entitled not only to claim maintenance out of the joint family property in possession of a coparcener but also from the property of the

joint family which has been purchased by a stranger with notice of the existence of the widow. (See Dattatraya Putto Honnangi Vs. Tulsabai

Chidambar Honnangi, .).

3. If a widow entitled to maintenance is in possession of the joint family property, she is, as already pointed out, not to be ousted from the joint

family property even by an heir unless arrangement is made for providing her with maintenance.

4. The liability to maintain a widow is attached to the joint family property.

It is true that all these characteristics mentioned above do not amount to any proprietary right to any portion of the joint family property.

Nevertheless, a right to maintenance is a right attached to the family property. The question is whether this distinction determines the application of

sub-section (1) or sub-section (2) of section 14 of the Act, as the cast- may be. In our opinion, this emphasis on the nature of the antecedent right

is not as important as the question whether the instrument, decree or award in sub-section (2) is the real source or originator of the restricted estate

granted thereunder. It is conceded that a widow having a share in the coparcenary property under the Hindu Women"s Rights to Property Act,

1937, cannot be prevented from claiming absolute estate under sub-section (1) by the mere fact that an instrument, decree or award which came

into existence after 1937 allotted her some joint family property specifically declaring that she will have only a life estate. The reason is that the

instrument, decree or award is not the source or foundation of the limited grant. Such a widow is entitled to say:

''The property which I have now in my possession is in lieu of my share in the joint family property. I was given nothing under the instrument or the

decree. My antecedent right to a share in the property is merely translated into another form through the medium of the instrument, decree or

award and hence sub-section (2) does not apply to me.

It appears to us that a similar contention can be made by a widow when some joint family property is allotted to her in lieu of maintenance. She.

can say:

I have an antecedent right attached to the family property for my maintenance. What is given to me through the medium of the instrument, decree

or award is in lieu of my right to maintenance. My former right is merely translated into another form through the medium of the instrument, decree

or award. Therefore, it is not the source or foundation of the right to property I have now in possession. Therefore, sub-section (2) does not apply.

On principle we see no difference between the two cases. The emphasis is not on the nature of the antecedent right claimed against the joint family

property but on the question whether the instrument, decree or award was the originator of the right conferred under it. Since in both types of

cases the instrument, decree or award serves merely as a medium which translates one form of right into another it cannot be regarded as the

originator of the right conferred under it.

22. It may be interesting to observe that under the Hindu law the right to a share in coparcenary property given to some widows was held

equivalent to the right to maintenance out of the family property. After the Hindu Women''s Rights to Property Act, 1937, came into force, the

situation is explained by Mulla in his book on Hindu Law, 13th Ed., at p. 98, as follows:

The share she gets on partition, it has been held, is in lieu of maintenance and if she can get a share in all the coparcenary property including

agricultural lands, her right to maintenance would cease. The right of claiming partition conferred upon a widow under the Act is personal to her.

The right being personal would come to an end on her death if no partition had taken place It has been held in a number of cases that, if she died

pending a suit for partition, her undivided interest would devolve by survivorship and would not go to her husband''s heirs as reversioners. The

reason generally adopted is that she got her interest in lieu of maintenance and the right conferred upon her being personal would not be crystallised

until actual partition by metes and bounds.

The passage cited above seems to suggest that a widow gets a share after 1937 in lieu of her maintenance. We have gone through the cases noted

in the foot-note on that page but, we have not been able to find therein any direct decision that a share has been granted to her under the Act in lieu

of maintenance. That seems to be the learned author''s inference from the fact that the share ensures only for the lifetime of the widow, that the right

given to her to share in the property is only personal to her and that if she gets such a share she is no longer entitled to get maintenance. The

conclusion from these facts may well lead to the inference that the share which was for the first time granted to a widow in 1937 was in lieu of

maintenance. Moreover, even before the Hindu Women''s Rights to Property Act, 1937, when some schools of Hindu Law permitted the wife,

mother and grandmother to share in the coparcenary property on actual partition, the share which was given to them was not because they had any

direct or proprietary interest in the coparcenary property but in lieu maintenance. Some of the favoured widows under the Hindu law obtained a

share in the property in lieu of maintenance, while others did not obtain any share but only got maintenance. It appears to us that in the context of

the Hindu widows the right to maintenance conferred under the Hindu Law is indistinguishable in quality from her right to a share in the family

property. That may well be the reason why the explanation to sub-section (2) of section 14 of the Act makes the female allottee of property ""in lieu

of maintenance"" as much a limited owner as when the widow acquires on ""inheritance"" or ""at a partition"". And if in the latter two cases it is

conceded that sub-section (2) does not apply on the ground of antecedent right to the family properties, we do not see any rational justification to

exclude a widow who has an equally sufficient claim over the family properties for her maintenance.

23. One has to see the anomalous results which follow on a narrow construction of section 14 of the Act. Before and after 1937 there were

widows in the joint family who did not get a share in the family properties but were only entitled to maintenance e.g. the widow of a pre deceased

son prior to 1937 would be entitled to maintenance and not to a share. If such a widow is allotted under an oral arrangement family properties of

which she remains in possession till 1956, she would directly come under sub-section (1) of section 14 of the Act and there is no question of the

application of sub-section (2) since there is no instrument whatsoever under which she claims. Then again, if after she is allotted family properties

orally, her rights to the same are confirmed in a document some years later but before 1956, she would still become the full owner of these

properties after 1956. (See Sharbati Devi v. Hiralal). But, if the same widow lives amicably in the family and in order to prevent future trouble

some family properties are allotted to her for maintenance sometime before 1956, the Madras case (Gurunadham v. Navaneethamma) and the

Orissa case (Narayan Patra v. Tata Patrani) referred to above would have it that her case should fall under sub-section (2) and not under sub-

section (1) of section 14 of the Act. We do not see any justification for coming to such an unjust result which could not have been within the

contemplation of the Legislature when it enacted sub-section (2). The provision therein which comes by way of exception must be strictly

construed and would have no application to cases except those where for the first time a new right to property is created, unrelated to the

antecedent right or interest in the grantee either in respect of the actual property which is the subject matter of the grant or the family property the

claim against which is crystallised in the allotted property. With respect, therefore, it is not possible to agree with the view taken by the Madras

High Court in Gurunadham''s case or by the Orissa High Court in Narayan Patra''s case. We respectfully agree with the view taken by Mr. Justice

Deshpande in Yamunabai Gangadhar''s case and also the view taken in Gadam''s case Shorbati Dev''s case and Sumeshwar''a case.

24. We must, however, draw attention to another judgment of this Court in Udkav Shankar v. Tarabai 1966 Mh. L. J. 87 : 69 Bom L R 795. It is

a decision of Mr. Justice Patel sitting singly and we are in respectful agreement with him on the point which was necessary to be decided on the

facts of that case. The learned Judge held that in section 14(2) of the Act of 1956 the word ""acquired"" means acquired for the first time under any

of the instruments there mentioned or under a decree. When the Hindu female has already by reason of law or otherwise an interest in the

property, then she does not ""acquire"" any interest in it by reason of the instrument or the decree, and in that case the restriction imposed cannot be

effective. However, in the last paragraph of his judgment the learned Judge has observed as follows (p. 796):

In both these cases the husbands of the widows had died prior to the coming into force of the Hindu Women''s Right to Property Act, 1937, and

on their husband''s death they had only a right of maintenance. In lieu of maintenance they were given a share in the properties with the restriction

of their interest to their life time. Evidently, the interest was ''acquired'' under the decrees of the Court.

These observations were made by the learned Judge with a view to distinguish the two cases which had been cited before him. The question with

regard to property acquired in lieu of maintenance-Whether it fell under sub-section (1) or sub-section (2) of section 14 of the Act-was not

directly before the learned Judge in that case. The observations are, therefore, merely obiter. There is Do full discussion also of the basis on which

the learned Judge made those observations.

25. In the present case, there is a further reason to hold that Hirabai had not only a right to enforce her claim for maintenance against the family

properties which was antecedent to the award, but she had also a sufficient possessory title to the lands She was in possession of the lands after

the death of her father-in-law and her husband. That gave her a possessory title which could not have been displaced by the coparcener without

making proper arrangement for her maintenance. We have already referred in this connection to the decision in Rani Bai"s case. Therefore, even if

the narrow view of the Madras case in Gurunadham v. Navaneeihamma referred to above was the correct view, Hirabai would have a possessory

lien sufficient to create an interest in the suit properties and she would, therefore, fall within sub-section (1) and not sub-section (2) of section 14 of

the Act. Mr. Shrikhande referred to the decision in Eramma Vs. Verrupanna and Others, . and contended that a widow in the joint family who had

no proprietary interest in the joint family properties would be deemed to be a trespasser if not in possession with the consent of the coparceners.

That case was not similar to the case of widow who was in possession of the property in lieu of her maintenance. The widow therein claimed to be

an heir by inheritance under sections 6 and 8 of the Act although the provisions thereof did not apply to her. She maintained that she was the heir

of the deceased and it was in that capacity that she claimed title. She also claimed that as she was in possession of the property at the time when

the Act of 1956 came into force, she should be regarded as having enlarged her limited ownership into full ownership. Their Lordships in the first

instance pointed out that she had no title by inheritance. On the other question, they held that in order that the widow may claim full title under sub-

section (1) of section 14 she must have some proprietary interest in the property however small it may be. They pointed out that the appellant

before them did not show that in fact she possessed some vestige of title, her mere possession not being sufficient and that possession was held to

be the possession of a trespasser. We do not think that that case has any application to the facts of the present case. There is nothing in the award

before us to show that Hirabai was regarded as a trespasser when the award was made. Mere allegations and counter-allegations made in the

pleadings before the arbitrator cannot be taken into account for the purpose of deciding now whether she was really a trespasser. Nemgonda in his

plaint claimed the whole of the property as the last surviving coparcener and requested the arbitrator only to pay maintenance to Hirabai. This was

countered by Hirabai by saying that she alone was entitled to the whole of the property and Nemgonda should be granted maintenance. The fact

that both of them were saying that the other should get maintenance would go to show that the status of the joint family was not denied and the

property also was claimed as joint family property. In a case like this, the position would be that Hirabai was in possession in exercise of her

possessory lien over the property as no provision had been made for her maintenance. In that view also sub-section (2) of section 14 of the Act

will have no application to this case.

26. In the result, therefore, we hold that Hirabai who was in possession of the suit properties till the commencement of the Act, obtained full

ownership over them thereafter, and, therefore after her death in 1967 her daughters viz. the two plaintiffs and defendant No. 1, would be the

owners of the said properties. Since defendants Nos. 2 to 6 are in possession of the properties after Hirabai''s death, the plaintiffs and defendant

No. 1 would be entitled to recover possession of the same from them.

27. The appeal, therefore, succeeds, the order passed by the learned Civil Judge, Senior division, Kolhapur, is set aside and a decree is passed in

favour of the plaintiffs and defendant No. 1 for possession of the suit properties from defendants Nos. 2 to 6. Inquiry to be made under O. XX, r.

12(1)(c), Civil Procedure Code, for mesne profits from the date of the suit. The plaintiffs shall get their costs in both the Courts from defendants

Nos. 2 to 6.