(1968) 04 BOM CK 0025

Bombay High Court

Case No: S.A. No. 398 of 1961

Yamunabai Gangadhar Kharade		APPELLANT
	Vs	
Parappa Sadashiv Rajmane		RESPONDENT

Date of Decision: April 8, 1968

Acts Referred:

- Hindu Succession Act, 1956 - Section 14(1)
- Transfer of Property Act, 1882 - Section 100

Citation: (1968) MhLj 828

Hon'ble Judges: V.S. Deshpande, J

Bench: Single Bench

Advocate: B.N. Shrotri and U.R. Lalit, for the Appellant; L.G. Khare, for the Respondent

Final Decision: Allowed

Judgement

V.S. Deshpande, J.

After stating the facts and dealing with a point not material in this respect the judgment proceeds. Assuming, however, that the finding of the fact recorded by the Assistant Judge is unassailable and binding on me in Second Appeal and it is held as proved that Shivubai acquired the property in dispute in lieu of maintenance on the strength of instrument, Exh. 54, as alleged by the plaintiff-respondent, the question still remains as to whether this circumstance alone could prevent Shivubai from becoming the absolute owner of the property in terms of section 14 (1) of the Hindu Succession Act, According to Mr. Lalit, Shivubai became the absolute owner of the property in view of the provisions of section 14 (1) of the Hindu Succession Act, as she was in possession of this property on June 17, 1956, and the property was given to her in lieu of her maintenance. The circumstance that she acquired the property in lieu of her maintenance under the strength of the instrument, Exh. 54, cannot make any difference to the right conferred on her u/s 14 (1) of the Hindu Succession Act. He relies on the judgment of the Calcutta High Court,

reported in Sasadhar Chandra Day and Others Vs. Sm. Tara Sundari Dasi and Others, , and the judgments of the Madras High Court reported in V. Sampathkumari Vs. M. Lakshmi Ammal and Others, and Rathinasamy v. Nayammal AIR 1963 Mad. 133. As against that, Mr. L G. Khare, the learned advocate for the respondent-plaintiff, relied on the judgments reported in Jaria Devi Vs. Shyam Sundar Agarwalla and Others, and Mt. S. Kuer v. D. M. Devi AIR 1960 Pat. 360 and urged that the property having been acquired by Shivubai pursuant to the terms of Exh. 54, the rights created in her under the said instrument must remain restricted in view of section 14 (2) of the Hindu Succession Act, The judgments reported in Jaria Devi Vs. Shyam Sundar Agarwalla and Others, and Mt. S. Kuer v. D. M. Devi AIR 1960 Pat. 360 are based on the peculiar facts of the respective cases. In subsequent judgments of the Calcutta High Court reported in Sasadhar Chandra Day and Others Vs. Sm. Tara Sundari Dasi and Others, and Lalchand v. Sushila A I R 1962 Cal. 623, a different view has been taken. In the Patna case, the widows had already relinquished all the rights they possessed in the property by way of inheritance and after such relinquishments, one of the widows was again put in possession of the disputed property under an instrument creating restricted rights. The ratio of the said judgment, therefore, cannot be of any assistance to support Mr. Khare"s argument. The reliance on Mali Bewa v. Dadhi Das A I R 1960 Orissa 81 by Mr. Khare is also equally misplaced, inasmuch as the same High Court has taken a different view in subsequent judgments. [Refer to Raghunath Sahu v. Bhimsen Naik A I R 1965 Orissa 09]. The judgments cited by Mr. Lalit, the learned advocate for the appellants, undoubtedly support his contention. The same view has been adopted by other High Courts also. [See Janak Dulari v. District Judge, Kanpur A I R 1961 All. 294, K.M. Venugopal Pillai Vs. K.M. Madhavakrishnan and Others, , Rangaswami v. Chinnammal AIR 1964 Mad. 387, A. V. Subbareddi v. A. Penchalamma AIR 1962 A P 368, Lachhia v. Ram Shankar AIR 1966 Pat. 191 and Gadam v. Venkataraju AIR 1965 A P 66]. The same view is adopted by the Punjab High Court in the case reported in Sharbati Devi v. Hiralal AIR 1964 Punj. 114. The view taken by the learned Judges of various High Courts is, that section 14 (2) of the Hindu Succession Act deals with rights which were acquired by the female Hindu for the first time under an instrument, or a gift, or a will, or a decree or an award as mentioned in the said sub-section (2) of section 14. Sub-section (2) of section 14 does not apply to cases where the female Hindu was already possessed of rights in the said property and the subsequent instrument or the decree merely proceeded to recognise the said rights. These judgments lay down further that the connotation of the word "acquire" occurring in sub-section (1) of section 14 has been enlarged and amplified by the explanation added to sub-section (1); while in the absence of such explanation to sub-section (2) the word "acquire" must be deemed to have been used in a very limited sense, and in sub-section (2) the words "acquire.....or under a decree or order of a civil Court or under an award" have to be read ejusdem generis with the preceding words viz. "property acquired by way of gift or under a will". It has been observed by the learned Judges in all these cases that the object of section 14 was to enlarge the right of the women in the property possessed by them as female Hindu and sub-section (2) was carved out as an exception to cover such cases where female Hindu recovered property by way of grants and the grantors did

not intend to grant the property to female Hindu without any restrictions. While the judgment was being dictated, Mr. L. G. Khare, the learned advocate appearing for the respondent very fairly drew my attention to the judgment of this Court delivered by my learned brother Deshmukh J. in the case of Jagannathpuri Guru v. Godabai 1967 Mh. L J 813 : A I R 1968 Bom. 25, wherein Deshmukh J. also has taken the same view.

2. It is, however, argued by Mr. Khare that all these cases relied on by Mr. Lalit and referred to in the above paragraph deal with cases where the female Hindus had acquired the property in dispute in the course of the partition to which they were entitled in exercise of their right to inherit the same by virtue of the provisions of the Hindu Women''s Rights to Property Act, 1937, or otherwise where the female Hindu possessed the right to inherit. These cases do not deal with the rights of the widow over the property given to her in lieu of her maintenance which came into possession of the widow for the first time pursuant to the terms of the instrument such as under Exh. 54 in this case. In the case reported in Sharbati Devi v. Hiralal AIR 1964 Punj. 114, the widow was already in possession of the property, before her possession in lieu of maintenance was subsequently confirmed under Court decree. According to Mr. Khare, till the execution of Exh. 54 on July 14, 1941, Shivubai did not possess any definite and ascertained right or interest in any property belonging to the joint family and her rights in the suit property were crystallised only when the property was put in her possession in lieu of her maintenance pursuant to the terms of Exh. 54. Mr. Khare''s argument is that, on the facts of this case, it must be held that Shivubai acquired this property in dispute under the instrument, Exh. 54, within the meaning of section 14 (2) of the Hindu Succession Act and as this instrument restricted the rights of Shivubai in the said property to her life-time the terms of section 14 (1) of the Hindu Succession Act cannot have the effect of enlarging the said restricted rights of Shivubai so as to make her absolute owner on June 17, 1956. Mr. Khare''s arguments do find support in a judgment of the Madras High Court reported in Thatha Gurunadham Chetti Vs. Thatha Navaneethamma (Died) and Another, delivered by Natesan J.

3. In the Madras case, one Guruviah Chetti died in the year 1932, prior to the enforcement of the Hindu Women''s Rights to Property Act in 1937 leaving his widow and four sons. There was a partition between the four sons on December 11, 1946, and under the partition deed some property was ear-marked for the maintenance of the widow and accordingly was given in her possession with the condition that after her death the property should go to the four sons as detailed in the said instrument of partition. It appears after the enforcement of Hindu Succession Act, 1956, she conveyed this property, acquired by her in lieu of her maintenance in 1946, in favour of one of her sons and this conveyance was challenged by the widow of one of the other sons by filing a suit. The question that fell for consideration was whether the widow had become the absolute owner of this property by virtue of section 14 (1) of the Hindu Succession Act on June 17, 1956 or she remained a restricted owner in view of sub-section (2). The learned Judge, with respect to him, rightly observed that the essential condition for the application

of sub-section (2) of section 14 was that the instrument under which the widow acquired the property, should be the source or foundation of her title to the property. Then he proceeded to hold--and in my opinion wrongly and I say as with great respect to him--that there was no doubt that the instrument dated December 11, 1946 was the source and foundation of her title and as the said instrument had restricted her rights in the said property, section 14 (1) did not apply and she could not become the absolute owner of the said property in view of section 14 (2) of the Hindu Succession Act. Reason, according to the learned Judge, is that, right to be maintained out of family properties by itself did not confer on her any possessory lien or proprietary right or title in the property of the family. Such right of widows is an indefinite right which no doubt can be made certain and charged on specific properties by agreement, decree of Court or Panchayat, award or otherwise. Even when a charge is created over a specific property, observes the learned Judge, it is well-known that there is no transfer of the property or of any right in the property, only there is creation of a right of payment out of the property.

4. Now it is true that this right of the widow for her maintenance out of the joint family property did suffer from these and several other infirmities. Even so, it was a potential right capable of being ascertained and being a subject-matter of the charge on the joint family property. Once it is found that a widow did possess such rights in the joint family property, it cannot be said that such rights or interests, attached to the property given in her possession in lieu of her maintenance at some stage, are created for the first time when the property is put in her possession under some arrangement or instrument or under a decree of some Court or under some award. The instrument or decree, still, cannot be said to be a source or foundation of her rights, in the property bo assigned. What she gets under the instrument or the decree in such cases, is only in recognition of the rights she possessed in the property by virtue of her being a widow of the said joint family. The true legal character of a widow"s rights in the joint family property is aptly described by this Court in the case of The Secretary of State for India Vs. Ahalyabai Narayan Kulkarni, .. Dealing with the rights of the widow and daughter of a deceased coparcener in joint family property in possession of the sole surviving coparcener, the Court observed (p. 426):

... Under the Hindu law, if a coparcener takes the property of another deceased coparcener by survivorship, he takes it with the burden of maintaining the widow and unmarried daughters of the deceased coparcener. It cannot be said that this right of maintenance is merely personal in the sense that it has no reference to the property which he gets by survivorship.

After reference to the distinction between the husband"s personal obligation to maintain his wife and the coparcener"s obligation to maintain widows out of the joint family property, this Court observed (p. 426):

...In that sense the property which he takes by survivorship is burdened with the obligation to maintain the widow. It may be that in the technical language it may not fall

within the definition of charge u/s 100 of the Transfer of Property Act. This charge is a later creation by statute, but the Hindu law has always regarded the widow''s right as a burden on the property. It has thus been held that the right of maintenance attaches to the property itself which is taken by survivorship.

5. This right of the maintenance of the widow could be given effect to in various ways. She could have been content by staying with the coparcener or content with getting some amount periodically from the surviving coparcener. In yet another case, her claim could have been satisfied by putting her in possession of a part of the joint family estate under oral arrangements. She might have enforced her claim by obtaining award or decree or received some property in satisfaction of this claim, under some instrument. What is of essence is that all these devices were meant to satisfy and recognize her legal claim which exists independently of the arrangement, instrument or award. In this view of the matter, it is not correct to say that where as here a Hindu widow was put in possession of some property in lieu of her maintenance, under some instrument, she can be said to have acquired the right in the property for the first time, only under the instrument. Her right to be maintained out of the property already existed by virtue of being a widow of the joint family and this right was antecedent to the date when the instrument came into existence. The instrument only recognizes her right to a certain ascertained and definite property though she had possessed such rights even before the date of instrument without reference to this particular property. In view of this, it is impossible to hold that any such instrument, decree or award and private arrangement is the source or foundation of her rights.

6. Apart from this aspect of the matter, to my mind, the language of section 14 (1) leaves no manner of doubt that property possessed by the widow in lieu of her maintenance, irrespective of the mode of the acquisition, is covered by sub-section (1) and not by sub-section (2) of section 14. Explanation to sub-section (1) in terms says that the word "property" in sub-section (1) includes the property acquired by female Hindu "in lieu of maintenance". There is no warrant for assumption that such property acquired by female Hindu under any instrument, decree or order of civil Court or award is excluded from the sweep of this explanation to sub-section (1). As is well-known the intention of the Legislature in enacting section 14 of the Hindu Succession Act was to enlarge the rights of the female Hindus in the properties which were possessed by them with restrictions as such female Hindus under the terms of Hindu law as it existed before the enforcement of the Hindu Succession Act of 1956. The object is to remove such restrictions and consequent discrimination and disability to which female Hindus were subjected under the terms of the said Hindu law and further object was to bring their rights on par with the rights of the men. That is why sub-section (1) in terms says that the property possessed by a female Hindu shall be held by her as a full owner thereof and not as a limited owner. This in itself goes to show that what was sought to be enlarged as a result of this section is what was possessed by them as limited owners.

7. The object of adding explanation to sub-section (1) seems to enlarge the connotation of the words "property" and "acquire". What normally could not be said to have been "acquired" is to be deemed to have been acquired by virtue of the notion created by this explanation. If the explanation is analysed it will be found that it deals mainly with three categories of properties possessed by female Hindus and which was not treated as her Stridhan or absolute property under some school of the Hindu law or the other. All property held or possessed by a female Hindu could not be her Stridhan as per old Hindu law. In section 124 of the Hindu Law by Mulla at p, 165, of the 13th Edn., the learned author deals with the property of a female Hindu acquired from various sources and observes that whether a particular kind of property is Stridhan or not, depends on (1) the source from which the property was acquired; (2) the status at the time of acquisition; (3) the school to which she belongs. In the first category comes the property, acquired by a female Hindu by inheritance or at a partition or in lieu of maintenance. Such property was invariably held by the female Hindu as a limited owner. Second category of the property is the one which a female Hindu acquired by devise or gift from relations or strangers before or after her marriage. According to certain schools of Hindu law, female Hindus held limited estate even in such properties. See sections 126 and 127 of Hindu Law at pp. 166-167. The third category of property is the one which she acquired by her own skill or exertion or by purchase or by prescription or in any other manner whatsoever.
Sub-section (2) of section 131 at p. 171 refers to the property acquired by female Hindus by mechanical arts or otherwise by her own exertions during coverture and the author observes that according to Mithila and Dayabhaga schools even such properties acquired by female Hindus could not be her Stridhan or absolute property. There is a reference to the fourth category of properties held by her as Stridhan. But it is not necessary to deal with the same as according to all schools of thought Stridhan was her absolute property and the same seems to have been referred in the explanation by way of abundant precaution.

8. Considered in this context the object of explanation of Sub-section (11 seems to make it clear that all categories of properties acquired by female Hindus as such female Hindus shall be of her full ownership notwithstanding that she held only limited rights therein according to the school of Hindu law to which she belonged. That which was a restricted estate of a female Hindu under some school or the other of the Hindu law is sought to be enlarged and converted into the property of her full ownership under this sub-section (1) of section 14, The object through and through has been to put an end to the discrimination to which women were subjected as against men under the Hindu law.

9. However limitations and restrictions imposed on a female Hindu otherwise than under the provisions of the old Hindu law are beyond the scope of the object with which section 14 was mainly enacted. That is why sub-section (2) has been enacted to make it clear that if any restricted estate is conferred under any gift or devise on any female Hindu, the same is not deemed to have been enlarged by sub-section (1) of section 14, Obviously it was never intended by the Legislature to enlarge the estate of the female Hindu which

were restricted not as a result of the old Hindu law but as a result of the restrictions created by the grantors themselves. Therefore, whatever restrictions existed on the rights of the property, dehors the provisions of Hindu law, the same were not sought to be touched at all and it was not the intention of the Legislature to put any restrictions on the grantors or on the contracting parties who wanted to create restricted rights in favour of Hindu females in the course of dealing with such women.

10. Viewed from this point of view, there can hardly be any difficulty in ascertaining as to what are the rights of the Hindu widows in regard to the property given to them in lieu of maintenance either under certain instrument or under oral arrangement. Properties acquired by female Hindus in lieu of maintenance, are in terms included in the sweep of explanation added to sub-section (1) of section 14. It is the real nature of the right that is possessed by female Hindu that will go to determine the character of the property. Where property is given to the widow in lieu of her maintenance by oral arrangement or pursuant to any written instrument or pursuant to any decree of the Court, the character of the property remains the same, viz., the widow gets the property in exercise of her right to be maintained out of the joint family property conferred on her under the old Hindu law. The instrument or the decree or the award in such cases only goes to recognise the rights which the widow already possessed and the instrument or the decree or the award cannot be said to be the source or foundation of such rights in the property. Sub-section (2) of section 14 clearly deals with the properties which are acquired by the Hindu females as a result of grant or as a result of contract independently of their rights under the former Hindu law. The words "property acquired..... under a decree or an order of a civil Court" have to be read ejusdem generis with the words "property acquired by way of gift or under a will". Under no circumstances can such an instrument or a decree of a civil Court or an award can have any remote reference to the instrument or a decree which only gives recognition to the rights which were possessed by Hindu widows under the former Hindu law. In this view of the matter I do not think that it is possible for me to agree with the judgment of the Madras High Court referred to above. I hold that even assuming that Shivubai had acquired the property under Exh. 54, she having acquired the same in recognition of her right; to be maintained out of the joint family estate, sub-section (1) of section 14 applied and she had become absolute owner on June 17, 1956 and after her death her heirs, defendants Nos. 1 and 2 and not the plaintiff could claim any rights in the same.

11. The result is that the appeal succeeds and is allowed with costs throughout. Plaintiff"s suit is dismissed.