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**(1976) 03 CAL CK 0022**  
**In the Calcutta High Court**  
**Case No : S.A. No. 864 of 1972**

Anath Bandhu Sen Mondal

APPELLANT

Vs

Sm. Chanchala Bala Dasi

RESPONDENT

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**Date of Decision :** 22-03-1976

**Acts Referred:**

Hindu Succession Act, 1956 — Section 14

**Citation :** AIR 1976 Cal 303 : 80 CWN 461

**Hon'ble Judges :** N.C. Mukherji, J;B.C. Roy, J

**Bench :** Division Bench

**Advocate :** Mukul Prakash Banerjee, for the Appellant; Kanan Kumar Ghosh and Dilip Kumar Sett, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

N.C. Mukherji, J.—The plaintiff is the appellant before us. This appeal arises out of a suit by the plaintiff as reversioner for recovery of khas possession of the suit property upon declaration of his title to the property and right to possess it after the death of the limited owner from whom the defendant is alleged to have been purchased the property.

2-3. The plaintiff's case may briefly be stated as follows :--

The suit property originally belonged to the plaintiff's great grand father Dinanath Sen Mondal who died leaving two sons Indranarayan and Suryyanarayan. Indranarayan died leaving his only son Abinash and Suryyanarayan died leaving his only son Ramgati. Between these two sons there was an amicable partition. Ramgati died about 24 years back leaving his widow Matibala. Consequently, Matibala acquired a widow's estate in respect of the property left by her husband. Motibala died on December 22, 1967. Abinash died leaving the plaintiff as the only son and heir. After the death of Matibala the suit property devolved upon the plaintiff as the sole reversioner. Though Matibala had no right to transfer the property left by her husband in order to deprive the

plaintiff, the defendant by exercising undue influence upon Matibala surreptitiously obtained a fraudulent deed of sale from Matibala in her favour in respect of the suit property on April 22, 1955 without payment of consideration and got the property recorded in her name in the R.S. Record. The plaintiff came to learn about the fraudulent transfer on 22nd January 1962. It is the plaintiff's case that transfer was made without any legal necessity. After Matibala's death, the property was to revert back to the plaintiff as the sole reversioner of Ramgati and the defendant had no right to possess it. As the defendant was illegally possessing the suit property, the plaintiff was compelled to start the present action.

4. The case of the defendant is that the suit property did not belong to Dinanath but to Ramgati, that the plaintiff was not the reversioner of Ramgati, that the sale deed was a bona fide transaction and was for legal necessity, that the price as stated in the kobala was duly paid to Motibala and that the plaintiff was aware of the transaction from the very beginning. The defendant before her purchase made bona fide enquiries about the legal necessities of Matibala and was satisfied that those existed. That being so, the defendant acquired an absolute and indefeasible title to the suit property and the plaintiff's suit was liable to be dismissed. The learned Subordinate Judge held that the plaintiff was the sole reversioner of the last male owner Ramgati, that the sale deed was a collusive transaction made without any legal necessity and without consideration and that the plaintiff was completely ignorant of the sale. It was also held that the defendant had no title to the suit property and no right to possess the same. The learned Subordinate Judge further found that since Matibala parted with her title and possession before the Hindu Succession Act, 1956 came into force her limited ownership in the suit property did not ripen into an absolute ownership and, therefore, the property was to revert back to the plaintiff after her death. In that view of his finding the learned Subordinate Judge decreed the suit granting plaintiff's prayer for recovery of khas possession except plot No. 1526 which had vested in the State. Being aggrieved, the defendant preferred an appeal.

5. The learned Additional District Judge agreed with the trial Court that the plaintiff is the sole reversioner of Ramgati. He also agreed with the trial Court that the sale was made without any legal necessity, and that the transaction was a collusive one. But at the same time the learned Additional District Judge held that the sale was real and for consideration and the defendant acquired a valid title to the suit property under the same. The lower appellate Court below further held that the defendant being a female Hindu and being in possession of the suit property at the date of commencement of the Hindu Succession Act, 1956 acquired an absolute title to the property by virtue of Section 14 of the Act, and that being the position, the plaintiff, although the sole reversioner of Ramgati, has no right to claim the suit property or to recover possession thereof. In that view of his finding the appeal was allowed. The judgment and decree passed by the learned Subordinate Judge were set aside and the suit was dismissed. Being aggrieved, the present appeal has been filed.

6. Mr. Mukul Prakash Banerjee, learned Advocate appearing on behalf of the appellant, in the first place refers to Section 14 of the Hindu Succession Act. Section 14 reads as follows:--

14 (1) --"Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.

Explanation:--In this sub-section, "property" includes both 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 the 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) ....."

7. Mr. Banerjee contends with all force that Section 14 very clearly lays down that any property which has been acquired by a female Hindu in the manner as mentioned in the Section over which she had limited interest before the commencement of the Act and if the said female Hindu has possession over the property at the commencement of the Act, then that limited ownership will ripen into full ownership. The Section therefore contemplates that the limited owner must be in possession of the property at the time of the commencement of Act. If she has already parted with her possession by alienating the said property, the alienee cannot be said to be a limited owner in possession of the property as contemplated by Section 14. The lower appellate Court below in order to come to the finding that Chanchala's limited ownership over the property which she purchased from Matibala ripened into full ownership relied only on the decision reported in Chinti etc. Vs. Daultu etc., . In this case a gift was made by a mother in favour of a daughter before the commencement of the Act. It was held that

"a daughter-donee became a full owner of the gifted property with effect from the date of the commencement of the Act by virtue of Section 14 when the daughter-donee is in possession of the gifted property upon the date of the commencement of the Act."

Their Lordships were of the opinion that conferring on the female-donee full rights of ownership is inherent in Section 14 itself. Their Lordships relied on the decision reported in Gummalapura Taggina Matada Kotturuswami Vs. Setra Veeravva and Others, . In that case it was held that

"Possession referred to in Section 14 need not be actual physical possession or personal occupation of the property by the Hindu female but may be possession in law. The possession of a licensee, lessee or a mortgagee from the female owner or the possession of a guardian or a trustee or an agent of the female owner would be her possession for the purpose of Section 14".

But the facts of the present case are different. In this case. Chanchala is neither a licensee, a lessee or a mortgagee. She is a transferee and claims to have acquired right on the basis of a deed of sale executed by Matibala, and that being so, it cannot be said that at the commencement of the Act Matibala was in possession of the property, Their Lordships of the Delhi High Court also relied on the case of Gostha Behari Bera and Others Vs. Haridas Samanta and Others, . It was held in the above case

"The opening words "property possessed by a female Hindu" obviously mean that to come within the purview of the section the property must be in possession of the female concerned at the date of the commencement of the Act. They clearly contemplate the female's possession when the Act came into force. That possession might have been either actual or constructive or in any form recognised by law, but unless the female Hindu, whose limited estate in the disputed property is claimed to have been transferred into absolute estate under this particular section, was at least in such possession taking the word "possession" in its widest connotation, when the Act came into force, the section would not apply".

We fail to see how the observations of P.N. Mukherjee, J. as above could persuade the learned Judges of the Delhi High Court to hold that a daughter in whose favour gift was made before the commencement of the Act by her widow mother becomes a full owner of the gifted property with effect from the date of the commencement of the Act by virtue of Section 14, simply because daughter donee is in possession of the gifted property upon the date of the commencement of the Act. Most respectfully we are to say that the opinion expressed in Gostha Behari Bera and Others Vs. Haridas Samanta and Others, did not lay down any such proposition. Their Lordships next relied on a decision reported in Eramma Vs. Verrupanna and Others, . In that case it was held

"The property possessed by a female Hindu as contemplated in Section 14 is clearly property to which she has acquired some kind of title whether before or after the commencement of the Act. It has further been held that the object of Section 14 is to make a female Hindu a full owner of the property which she has already acquired or which she acquired after the enforcement of the Act. It does not in any way confer a title on the female Hindu where she did not in fact possess any vestige of title."

Their Lordships did nothing more than interpret Section 14 and very clearly laid down that the limited owner must have acquired the property in any of the modes mentioned in the Explanation to Section 14 and that she must be in possession of the said property at the time of the commencement of the Act. The. Section cannot be said to have contemplated the cases where the limited owner before the commencement of the Act had parted with her possession by making a deed of sale or a deed of gift. Their Lordships of the Delhi High Court were conscious of the position that their interpretation of Section 14 would create an anomalous position, while a male donee from a limited owner

remaining a limited owner, the female donee becomes absolute owner by virtue of Section 14. Their Lordships however were of the opinion that the anomaly is inherent in the section itself and the transferee's right to become an absolute owner cannot be denied on that ground. With respect we cannot agree with the view expressed by their Lordships that the anomaly is inherent in the section. Mr. Banerjee submits that on a plain reading of the section it must be held that the section contemplates only cases of "those limited owners who are in possession of the property either actual or constructive at the time of the commencement of the Act and the Section does not contemplate cases where the limited owner before the commencement of the Act has already parted with possession by way of deed of gift or deed of sale.

8. Mr. Banerjee next refers to us several decisions of the Supreme Court in which Section 14 has been interpreted. The first decision relied on by Mr. Banerjee has been reported in *Gummalapura Taggina Matada Kotturuswami Vs. Setra Veeravva and Others*, . This is the very decision on which their Lordships of the Delhi High Court relied. It has been held in this case that

"The word "possessed" in Section 14 is used in a broad sense and in the context means the state of owning or having in one's hand or power. Thus the opening words "property possessed by a female Hindu" must be in possession of the female concerned at the date of the commencement of the Act. That possession might have been either actual or constructive or in any form recognised by law, but unless the female Hindu, whose limited estate in the disputed property is claimed to have been transformed into absolute estate under this particular section, was at least in such possession, taking the word "possession" in the widest connotation when the Act came into force, the section would not apply."

Their Lordships in this case approved of the decision reported in *Gostha Behari Bera and Others Vs. Haridas Samanta and Others*, . This decision, in our opinion, very clearly stated that a Hindu widow who has acquired the property in any of the ways mentioned in the Explanation to Section 14 must be in possession of the said property at the commencement of the Act in order to attract the provisions of Section 14. It is only in such a case that her limited ownership is ripened into full ownership.

9. Mr. Banerjee next refers to the decision reported in AIR 1967 SC 1786, *Mangal Singh v. Smt. Rattno*. It has been held in this case that

"on the language of Section 14(1), this provision will be applicable to any property which is owned by a female Hindu even though she is not in actual, physical or constructive possession of that property. The expression "possessed by" is not intended to apply to a case of mere possession without title and the legislature intended this provision for cases where the Hindu female possesses the right of ownership of the property in question."

10. Mr. Banerjee contends that different High Courts have interpreted Section 14 of the Act to say that the limited owner must be in possession of the property at

the time of the commencement of the Act and that the alienee cannot get the benefit of Section 14. Mr. Banerjee refers to a decision reported in Chandrasekhara Iyer and Another Vs. Sivaramakrishna Iyer and Another, . It has been held that

"where the female owner had sold away property, in which she had only limited interest, before the Act came into force and put the vendee in possession, she could in no sense, be regarded as "possessed" of the property when the Act came into force".

The facts of this case are similar to the facts of the present case.

11. Mr. Kanan Kumar Ghosh, learned Advocate appearing on behalf of the respondent however contends that if the alienee be a female Hindu and if she be in possession of the property at the commencement of the Act which she has acquired in any of the modes mentioned in the Section, then she would certainly get the benefit of Section 14. We will subsequently deal with the arguments advanced by Mr. Ghosh to support his contention. The next case referred to by Mr. Banerjee is reported in Mst. Mukhtiar Kaur Vs. Mst. Kartar Kaur and Others, . In this case a Hindu widow parted with possession by executing a deed of gift. It was held that

"the widow cannot be said to be "possessed" of the property within the meaning of Section 14 and does not become full owner."

The next case referred to by Mr. Banerjee has been reported in Sulochana Kuer and Others Vs. Deomati Kuer and Another, . In this case a gift was made by a female Hindu having limited interest in favour of one daughter to the exclusion of other daughters. The said gift was made before coming into force of the Act. It was held that

"The estate which the donee got did not become absolute because a Hindu woman's estate cannot be transferred by sale or gift."

It was further held that

"Reversioners could obtain declaration that gift deed was ineffective beyond lifetime of the widow".

Mr. Banerjee next refers to the Full Bench decision of the Patna High Court reported in Harak Singh Vs. Kailash Singh and Another, . In this case their Lordships overruled the earlier decisions of their Court and held that

"the object of the Act was to improve the legal status of Hindu women, enlarging their limited interest in property inherited or held by them to an absolute interest, provided that they were in possession of the property when the Act came into force, and, therefore, in a position to take advantage of its beneficent provisions. The Act was certainly not intended to benefit alienees who with their eyes open purchased the property from the limited owners without justifying necessity before the Act came into force, and at a time when the vendors had

only limited interest of Hindu women. The effect of Section 14 is not to enlarge the alienee's interest into an absolute indefeasible interest".

Similar view was taken in the case -reported in AIR 1958 Mad 255. (Marudakkal v. Arumugha Goundar). In this case it was held that

"the property alienated by a Hindu widow and possessed by the alienee before the Act came into force is not within the language of Section 14(1). Nor does an enlargement of the interest owned by the alienee in the property form any part of the purpose sought to be achieved by the enactment of Section 14(1). The purpose of the section is merely to free Hindu women from the fetters imposed on them by the earlier Hindu law in relation to the holding and enjoyment of property. No such purpose would be served by enlarging alienee's interest."

The proposition laid down in this case applies with all force to the facts of the present case. Similar view has been taken in the case reported in Gaddam Venkayamma and Others Vs. Gaddam Veerayya (died) and Others .

12. Mr. Banerjee next refers to a Full Bench decision of the Punjab High Court reported in Amar Singh and Others Vs. Sewa Ram and Others, . It has been held in this case that

"Section 14 can have no applicability to a case in which a female Hindu had sold the property before the Act came into force and parted with its possession at the time of sale. Section 14 was never intended to benefit transferees from a female owner purchasing the property from her at a time when her estate was limited".

Similar view was taken in the case reported in S. Kanthimathinatha Pillai Vs. Vayyapuri Mudaliar, and also in the case reported in Sheopujan Pandey Vs. Ramsewak Ojha and Others, .

13. Mr. Banerjee also refers to a decision reported in Sansir Patelin and Another Vs. Satyabati Naikani and Another, . It has been held in this case that

"Where a female heir transfers the property inherited by her before the Act came into force without any legal necessity, she does not get any absolute estate in respect of it as it cannot be said that the property was in her possession",

This being the legal position Mr. Banerjee with much force contends that the provisions of Section 14 are very clear to indicate that in order to get the benefit, a limited owner acquiring property in any of the modes mentioned in Section 14 must be in possession of the said property either actual or constructive. When she has already parted with her property by executing a deed of gift or a deed of sale the donee or the transferee from the limited owner cannot be said as being in possession of the property as a limited owner as contemplated u/s 14 of the Act. The intention of the Legislature, Mr. Banerjee submits was to enlarge the limited interest of a Hindu female but it never contemplated female Hindu in whose favour the property was already transferred before the Act came into force.

14. Mr. Ghosh in support of his contention very much relies on the section itself. He placed the section several times before us and contended that it is very clear that Section 14 provides that any property possessed by a female Hindu shall be held by her as full owner thereof and not as a limited owner. The Explanation to Section 14 lays down the modes in which the property can be acquired. One of the modes is by purchase and that being so, a female Hindu who has acquired the property before the commencement of the Act by purchase from a limited owner and got the limited interest, her limited interest will ripen into absolute interest. In support of his contention he very much relies on the Full Bench decision of the Delhi High Court which we have discussed above. Mr. Ghosh while placing the Full Bench decision of the Delhi High Court submits that their Lordships were conscious of "the anomalous position that while the male transferees have been excluded that female transferees have been benefited by Section 14. Mr. Ghosh submits that this is a legislative dispensation and the Section should be interpreted as it is Simply because the male transferees have been excluded it cannot be said that the female transferees would not get the benefit of Section 14 if it otherwise gives such benefit to the female transferees. In this connection Mr. Ghosh further submits that the process of benefitting the females started as early as in 1929 and the legislative intent was always to give benefit to the females and the enactment of Section 14 is culmination of the said process. In this connection Mr. Ghosh refers to the several amendments by which the rights of females were recognised more and more from time to time keeping pace with the prevailing social conditions. Mr. Ghosh goes on to say that the language of Section 14 is very clear and that the section should be interpreted as it is without trying to import anything else into the section and if the section is interpreted as it is, it must be said that all the female Hindus who are in possession of. limited interest in respect of any property at the time of the commencement of the Act would become full owners in respect of the said property after coming into force of the Act. The section cannot exclude the transferees from the limited owner. Mr. Ghosh relies on the decision reported in *Eramma Vs. Verrupanna and Others*, . In this case it has been held that

"the property possessed by a female Hindu as contemplated in the section is clearly property to which she has acquired some kind of title whether before or after the commencement of the Act".

It was further held that

"The section cannot be interpreted so as to validate the illegal possession of a female Hindu and it does not confer any title on a mere trespasser. In other words, the provisions of Section 14(1) of the Act cannot be attracted in the case of a Hindu female who is in possession of the property of the last male holder on the date of the commencement of the Act when she is only a trespasser without any right to property".

Their Lordships therefore laid down that the section contemplates the cases of the limited owners who have succeeded as such or acquired property as such,

but does not contemplate those of the female Hindu who have acquired any legal right on the basis of a deed of transfer. This case therefore does not help Mr. Ghosh.

15. After giving our careful consideration and relying on the proposition of law as laid down by the Supreme Court in the cases referred to above and also the principles laid down by several High Courts including the Calcutta High Court, we have no hesitation to hold that Section 14 was not meant to benefit an alienee. Section 14 wanted to benefit those female Hindus who were limited owners in the then existing Hindu Law before the commencement of the Act. In the present case the limited owner Matibala having transferred the limited interest to Chanchala before the passing of the Act. it cannot be said that Chanchala's limited interest, if any, ripened into absolute interest in terms of Section 14 of the Act..

16. With regard to the question whether the transfer by Matibala in favour of Chanchala was for legal necessity, the trial Court finds that there was no legal necessity for the sale of the property. It was further held by the learned Subordinate Judge that the whole transaction was a collusive one. The lower appellate Court observed that the finding of the learned Subordinate Judge that the sale was made without any legal necessity was not challenged at the time of argument. He further finds that

"it is seen from the evidence that Matibala who had none else to maintain besides herself had enough lands for that purpose. The learned Subordinate Judge has elaborately and ably discussed the evidence on this point and I have nothing to add to it. His finding is fully justified by the evidence on the record. The learned Subordinate Judge drew the inference that the transaction was a collusive one. It is difficult to differ from the inference drawn by the learned Subordinate Judge and the transaction really smacks of collusion between the defendant and Matibala. It further appears that Matibala was eager to see that the property left by her husband went to the hands of her own relations before her death so that the reversioner may have nothing to inherit".

After observing as above the learned appellate Court below finds that

"When the consideration money was fully paid and the sale took place, it is not worthwhile to enquire what was the real motive behind the sale. Collusion or no collusion the defendant acquired a valid title under the sale whatever might be the nature of the title acquired by her. I accordingly hold that the sale was real and for consideration and that the defendant acquired a valid title to the suit property under the sale".

After holding that the sale was not for legal necessity and further holding that the transaction was collusive, we fail to understand how the lower appellate Court came to conclusion that the sale was real and for consideration, and that the defendant acquired a valid title to the same. Be that as it may, it is the concurrent finding of both the Courts below that the sale was not for legal

necessity and we find nothing to differ from the said concurrent finding. In conclusion we hold :hat Section 14 does not come forward to benefit the alienees who with their eyes open purchased the property of a limited owner; Section 14 was enacted with the object of enlarging the limited interest of a female Hindu acquiring the property n any of the modes mentioned in the section and who was in possession of the property either actual or constructive at the time of the commencement of the Act. It never intended to enlarge the Limited interest of such female Hindu who before the commencement of the Act has parted with the possession of the property by executing either a deed of sale or a deed of gift.

17-18. For the reasons stated above this appeal is allowed. . The judgment and decree passed by the appellate Court below are set aside and those of the learned Subordinate Judge are restored. There will be no order for costs.

29-3-1976:--

19. After we delivered judgment Mr. Ghose, learned Advocate for the respondent, submitted that in our judgment we did not consider one of his arguments, namely, even assuming that Chanchala's interest did not ripen into absolute ownership. In that case even the plaintiff cannot be held to be the reversioner of Ramgati. In this Connection it is stated that on the evidence adduced on behalf of the plaintiff it is very clear that Ramgati had a sister named Motibala and there is no evidence that when Ramgati's widow Matibala died, Ramgati's sister Motibala was alive or not. The plaintiff did not adduce any evidence to that effect. If it is established that Motibala, Ramgati's sister was alive, when Ramgati's widow Matibala died, then Ramgati's sister Motibala would be the reversioner in preference to Anath Bandhu Sen Mondal, the plaintiff. We have gone through the grounds taken in the lower appellate Court. Though it was challenged that Ramgati was not the reversioner, no ground was taken to the effect " that Ramgati's sister Motibala was the reversioner. It is true that P.W.1 Radha Govinda Chakraborty in cross-examination states that Suryyanarayan had a son and a daughter. The daughter was Motibala. Again in cross-examination P.W. 4 Dwijendranath Mandal states that Ramgati had a sister. But there is absolutely no evidence to show either on the side of the plaintiff or on the side of the defendant whether Ramgati's sister Motibala was alive when Ramgati's widow Matibala died. On going through the judgments of the Courts below we find that both the Courts took into consideration all the oral and documentary evidence and came to the definite conclusion that the plaintiff is the reversioner of Ramgati. That being the concurrent finding of both the Courts we are of the opinion that we should not disturb that finding. The contention raised by Mr. Ghosh is therefore negatived.

B.C. Ray, J.

20. Agree.