

(2018) 01 KAR CK 0105
In the Karnataka High Court
Case No : 161 of 2002

ARAVIND S/O KRISHNAJI KULKARNI

APPELLANT

Vs

BASAPPA YALLAPPA TADASAD & ORS

RESPONDENT

Date of Decision : 24-01-2018

Acts Referred:

[Hindu Succession Act, 1956](#), [Section 14](#) -
Property of a female Hindu to be her absolute property

Citation : (2018) 01 KAR CK 0105

Hon'ble Judges : John Michael Cunha

Bench : Single Bench

Advocate : SURESH N. KINI, G. S. BHAT & ASSOCIATES, MAHESH WODEYAR,
PRAKASH S. UDAKERI, V. K. KULKARNI, V. V. GUNJAL

Final Decision : Allowed

Judgement

1. These two appeals are arising out of the common judgment dated 04.09.2001 passed by the Principal Civil Judge (Sr.Dn.), Hubballi in

R.A.Nos.37/1996 and R.A.No.63/1996, whereby the judgment and decree passed by the Principal Civil Judge (Jr.Dn.) in O.S.Nos.1001/1989

and 1002/1989 has been set aside and consequently, the suits filed before the trial Court are dismissed.

2. The brief facts leading to the appeals are as follows:

(i) The original plaintiff No.1 Smt. Laxmibai and plaintiff No.2 Sri. Aravind filed the above suits for declaration that plaintiff No.1

(Laxmibai) is the full and absolute owner of the suit schedule properties and for a consequential relief to delete the entry in the Record

of Rights.

(ii) In O.S.No.1001/1989, the subject matter of the suit is agricultural land

bearing R.S.No.7/2 measuring 13 acres 24 guntas situate in Haliyal Village in Hubballi Taluk. In O.S.No.1002/1989, the schedule property is the agricultural land bearing R.S.No.287 measuring 3 acres 28 guntas situate in the same village.

(iii) According to the original plaintiffs, the suit lands originally belonged to the family of the husband of plaintiff No.1, Sri. Venkatesh

Narasa Kulkarni. The genealogy of the family was given as under:

CHART OMITTED

(iv) The sum and substance of the pleadings in both the suits is that, in a partition suit between the members of the joint family of

Venkatesh Narasa Kulkarni, in Special Suit No.19/1939, a compromise decree was passed on 03.10.1940. In terms of the said

compromise decree, the properties comprised in Survey Nos.7/2 and 287 were given to the husband of plaintiff No.1 for his

maintenance and the compromise provided that, after the death of her husband, the two lands given to him should be enjoyed by

plaintiff No.1 in lieu of maintenance. The husband of plaintiff No.1 died on 06.07.1957. After his death, plaintiff No.1 having found

that the above lands were in the possession of Sri.Yallappa, predecessor of the defendants in O.S.No.1001/1989 and Sri.

Kamalsab, defendant in O.S.No.1002/1989, instituted a suit in L.C.Suit No.308/1957 on the file of the Joint Civil Judge (Jr.Dn.),

Hubballi, for possession of the lands. In the said suit, the defendants asserted among other things that they were bona fide purchasers

for value without notice and contended that the plaintiff had no right to obtain possession. The trial Court decreed the suit and held

that the defendants therein were bona fide purchasers for value without notice. Against the said judgment and decree, the defendants

and other purchasers filed Civil Appeal Nos.171/1959 and 172/1959 in the Court of District Judge, Dharwad. Both the appeals

came to be dismissed on 09.02.1962. The learned District Judge while upholding the decree of the trial Court, set aside the finding of

the trial Court that the purchasers from deceased Venkatesh and his son Narayana were bona fide purchasers and thus reversed the

finding of the trial Court on this issue. As against the judgments of these two

appeals, the matter was not further agitated and the decree attained finality.

(v) Further, the plaintiffs pleaded that the plaintiff No.1 took possession of the suit lands on the strength of above decrees and since

then 1st plaintiff has been in possession of the suit lands and by virtue of Section 14 of the Hindu Succession Act, 1956 (hereinafter

referred to as "the Act", for brevity) she became absolute owner of the above properties. Contending that the defendants have been

causing obstruction to the plaintiffs in the enjoyment of the suit lands, she instituted another suit in O.S.No.204/1970 in the Court of

Munsiff for permanent injunction. Even the said suit came to be decreed on 27.07.1971. In spite of the said decree, plaintiff No.1

having found the name of defendants' father entered in the revenue records and the defendants were causing hindrance to the

plaintiffs in enjoyment of the suit lands, they filed the above suits namely O.S.Nos.1001/1989 and 1002/1989 for declaration that

plaintiff No.1 is the absolute owner of the suit lands and for consequential deletion of the entries contained in the record of rights.

(vi) On entering appearance, the defendants disputed the claim of the plaintiffs that the suit lands were given to her for maintenance

and that plaintiff No.1 is in possession of the suit lands and has become absolute owner thereof by virtue of Section 14 of the Act.

The defendants contended that their predecessors were in possession of the suit lands by virtue of the purchase of the suit property

from Venkatesh and Narayan vide registered sale deed dated 10.05.1949 in favour of Yallappa and sale deed dated 05.06.1950 in

favor of Kamalsab and the revenue entries having been effected based on the title acquired by them under the registered sale deeds

sought for dismissal of the suit.

(vii) Based on these pleadings, the trial Court framed the following issues:

IN O.S.NO.1001/1989

1. Whether the plaintiffs prove that the first plaintiff is the widow of Venkatesh ?
2. Whether the plaintiffs prove that Venkatesh died on 6.7.1957?
3. Whether the plaintiffs prove that suit land was given to her in lieu of

maintenance under decree in special suit

No.19/39?

4. Whether the plaintiffs prove that the first plaintiff filed suit in O.S.No.308/57 against the father of the depts and that in

appeal in C.A.No.171/59 and 172/59 it was decreed for possession in favour of the first plaintiff and held that the father

of the depts was not bonafide purchaser of the land for value without notice?

5. Whether the plaintiffs prove that the first plaintiff took possession of the suit land on the strength of the said decree

and that O.S.No.204/70 was decree in her favour restraining the depts from interfering with such possession?

6. Whether the plaintiff became the absolute owner of the suit land U/S 14 of the Hindu Succession Act, 1956?

7. Whether the plaintiffs prove that the mutation of the land in the name of the father or the depts is invalid?

8. Whether the court fee paid is insufficient?

9. Whether the suit is bad for mis-joinder of parties?

10. Whether the plaintiffs are entitled to the declaration sought?

11. Whether they are entitled to the deletion of the entry in the record or rights?

12. What order or decree?

IN O.S.NO.1002/1989:

1. Whether the plaintiff proves that she is widow of Venkatesh ?

OR

Whether the dept proves that the widow of Venkatesh is dead and that the first plaintiff is an imposter?

2. Whether the first plaintiff proves that Venkatesh died on 6.7.1957?

3. Whether the first plaintiff proves that a compromise decree in special suit No.19/39 provided that on the death of

Venkatesh the suit lands were to be given to her for her maintenance?

4. Whether the first plaintiff proves that she filed L.C.Suit No.308/57 I and that it was finally held in C.A.171 and

172/59 that the dept was not a bonafide purchaser for value without notice of her rights?

5. Whether the first plaintiff proves that she took possession of the land about 20 years prior to suit, that she became the

absolute owner U/s. 14 of the Hindu Succession Act and that she secured a decree against the deft for permanent

injunction in O.S.No.205/70?

6. Whether the suit is bad for mis-joinder of parties?

7. Whether the first plaintiff is entitled to declaration sought?

8. Whether the first plaintiff is entitled to deletion of the name of the deft in RTC?

9. What decree or order?

(viii) On considering the oral and documentary evidence produced by the parties, the trial Court answered the above issues as under:

IN O.S.NO.1001/1989

Issue No.1 : Yes

Issue No.2 : Does not survive

Issue No.3 : Yes

Issue No.4 : Affirmative

Issue No.5 : Affirmative

Issue No.6 : Yes

Issue No.7 : Affirmative

Issue No.8 : Court fee paid is proper

Issue No.9 : No.

Issue No.11 : Yes

Issue No.12 : As per final order.

IN O.S.NO.1002/1989

Issue No.1 : Yes

Issue No.2 : Does not survive

Issue No.3 : Yes

Issue No.4 : Affirmative

Issue No.5 : Affirmative

Issue No.6 : No.

Issue No.7 : Yes

Issue No.8 : Yes

Issue No.9 : As per final order.

(ix) The matter having been carried in appeals, the 1st Appellate Court framed the following point for consideration:

1. Whether the learned Judge of the trial Court erred in holding that the late plaintiff became absolute owner of suit lands by virtue

Section 14 (1) of the Hindu Succession Act, 1956.?

(x) Having answered the above point in the affirmative, the 1st Appellate Court reversed the findings of the trial Court and

consequently, allowed the appeals and dismissed the suits filed by plaintiffs No.1 and 2.

(xi) Feeling aggrieved by the impugned judgment, the 2nd plaintiff is before this Court on the strength of the Will executed by plaintiff

No.1 in his favour.

3. I have heard the learned counsels appearing for the parties.

4. The learned counsel for the appellant Sri.Suresh N. Kini would contend that;

(i) the suit schedule properties were the joint family properties of the husband of the 1st plaintiff - Smt.Laxmibai. Smt.Laxmibai had pre-existing

right in the said property. In recognition of the said pre-existing right, during the partition of the joint family properties, a life interest was created in

her favour. The said right was granted to the deceased plaintiff No.1 in lieu of maintenance. Hence, by virtue of Section 14(1) of the Act, her life

interest got enlarged into absolute right and therefore, neither her husband nor her step son Sri.Narayana were entitled to transfer or alienate the

properties which were in her possession as holder of life interest. Consequently, the defendants (purchasers) did not derive any right, title or

interest in the suit schedule properties. It is the submission of the learned counsel that the case of the plaintiffs falls within Section 14(1) of the Act.

(ii) The learned counsel has drawn my attention to the relevant pleadings of the parties in the previous proceedings and has emphasized that in

L.C.Suit No.308/1957, it was specifically pleaded that the suit schedule properties as well as other properties involved in the said suit were the

joint family properties. The assertion made in the plaint was not denied or disputed by the defendants therein. On the other hand, in the written

statement filed therein, at para 3, it was admitted by the defendants that the suit schedule properties were belonging to Sri. Venkatesh and his

family. Therefore, it goes without saying that the properties in question were impressed with the character of joint family properties.

(iii) The learned counsel has placed reliance on the decision of the Hon''ble Supreme Court in the case of Vaddeboyina Tulasamma and others Vs.

Vaddeboyina Sesha Reddi (dead) by LRs reported in AIR 1977 SC 1944 and would contend that, it is a settled law that a Hindu female is

entitled to maintenance out of her deceased husband's estate, irrespective of whether the estate may be in the hands of male issue or it may be in

the hands of his coparceners. The joint family estate in which her deceased husband had a share is liable for her maintenance and she has a right to

be maintained out of the joint family properties. It is the submission of the learned counsel that, in acknowledgement of her right she was granted

the suit schedule properties in lieu of her maintenance and hence by virtue of Section 14(1) of the Act, the limited right granted to her has enlarged

into an absolute right. The learned counsel has referred to para 3 of the above judgment and has emphasized that, whatever be the kind of

property, moveable or immovable and whichever be the mode of acquisition, the object of legislature was to wipe out the disabilities from which a

Hindu female suffered in regard to ownership of property under the old Shastric law. Therefore, the first Appellate Court has committed a serious

error in reversing the judgment rendered by the trial Court, which had correctly applied the provisions of Section 14(1) of the Act. The learned

counsel would further submit that it is only when the property is acquired by the female for the first time under a gift, decree or order or award,

without there being any pre-existing right, by virtue of Section 14(2) of the Act, she should be disentitled from claiming absolute ownership thereto.

But in the instant case, the terms of the compromise petition and the surrounding facts and circumstances brought on record would clearly indicate

that the suit schedule properties were the joint family properties of her husband's family and with a view to provide her maintenance, she was

granted life interest which is now fructified into an absolute right by virtue of Section 14(1) of the Act. It is not a new right acquired by her for the

first time so as to attract Section 14(2) of the Act and hence he has sought for setting aside the impugned judgment of the 1st Appellate Court and

to restore the decree passed by the trial Court.

5. Refuting the above arguments, the learned counsel for the respondents/purchasers would submit that;

(i) The facts of the case fall within Section 14(2) of the Act. The learned counsel would submit that Smt.Laxmibai did not have any pre-existing

right in the properties. She was not a party to the partition suit. If she had any right in the family properties, she would have been made a party to

the special suit No.19/1939. The compromise decree passed therein namely Ex.P1 would clearly indicate that the properties belonging to Narasa

Kulkarni were partitioned among his legal heirs and under the said compromise, the properties were allotted to her step son Narayana subject to

life interest in favour of her husband Venkatesh and only after the death of her husband Sri.Venkatesh, she was entitled to a limited right of

enjoyment of the properties. Her husband Sri.Venkatesh died in 1957, after coming into force of Hindu Succession Act, 1956. Therefore, she

became entitled to the possession of the suit property only after coming into operation of the Hindu Succession Act, 1956. There is nothing in the

compromise decree in Special Suit No.19/1939 to indicate that life interest was reserved in her favour in lieu of her maintenance as contended by

the plaintiffs. The right granted to her was an independent right as explained by the Hon''ble Supreme Court in Tulasamma's case (supra). When

the property acquired by the Hindu female was granted to her for the first time under an instrument, gift, decree, order or award, she would be

entitled to hold the said right only as a restricted owner and not as absolute owner thereof. Therefore, the case of the plaintiff No.1 falls within

Section 14(2) of the Act. The 1st Appellate Court therefore, has rightly non-suited the plaintiffs by resorting to Section 14(2) of the Act. Hence,

there is no justifiable reason to interfere with the impugned judgment passed by the 1st Appellate Court.

(ii) The claim of the plaintiffs is also liable to be dismissed on the ground of res judicata as well as on the principles enshrined in Order II Rule 2 of

CPC. Dilating on this point, the learned counsel would submit that even though the plaintiffs had challenged the alienations made in favour of the

defendants, in the previous suit namely L.C.Suit No.308/1957, the plaintiffs did not seek for a declaration that the life interest conferred on the 1st

plaintiff under the compromise decree was in lieu of her maintenance and that the same has ripened into absolute right by virtue of Section 14(1) of

the Act. The plaintiffs having abandoned the said claim, the present suits filed by them are hit by the principles of res judicata and barred by the

provisions of Order II Rule 2 of the CPC. In support of his contention, the learned counsel has referred to the following decisions:

- i. Shivadev Kaur (Dead) by LR's & Ors V/s R.S.Grewal [2013 (4) SCC 636]
- ii. Jagan Singh (Dead) through LR's V/s Danavanthi and another [2012 (2) SCC 628]
- iii. Sadhu Singh V/s Guruswara Sahib Narike and Others [2006 (8) SCC 75]
- iv. Bhura and others V/s Kashiram AIR 1994 SC 1202
- v. Kothi Satyanarayan V/s Galla Sithayya & Others 1986 (4) SCC 760
- vi. Naraini Devi V/s Ramo Devi 1976 (1) SCC 574
- vii. Mst.Karmi V/s Amru & Ors 1972 (4) SCC 86
- viii. HaridasMondal V/s Ananth Nath Mittra AIR 1961 SC 1419

6. After hearing the parties and considering the pleadings and the evidence adduced by the parties and the findings recorded by the Courts below,

in the light of the law laid down in the above decisions, in my view, the second contention urged by the learned counsel for the defendants based on

the plea of res judicata and Order II Rule 2 of CPC is liable to be rejected outright. A perusal of the records reveal that the defendants have not

urged this plea either in their written statements or in the course of their arguments before the trial Court. Needless to say that the plea of res

judicata and abandonment of the claim attracting Order II Rule 2 CPC is a mixed question of fact and law. The germs of this plea must find place

in the pleading and necessary documents need to be produced before the Court in order to show that the issues arising in the subsequent suit have

been heard and decided in the previous suit and that the claim now sought to be agitated was abandoned by the plaintiffs in their previous suit. The

defendants having not laid any foundation in their pleadings and having not produced the records of the previous proceedings to substantiate the

said plea and having failed to invite any finding by the Courts below on this issue, in my view, the defendants are not entitled to raise the said issue

for the first time in the second appeal. The appeals are admitted to hear the

substantial question of law arising out of the application of Section 14

of the Hindu Succession Act. Therefore, in my view, the only question that arises for consideration in these appeals is:

i. Whether the 1st Appellate Court has committed an error of law and fact in holding that the life interest acquired by the original plaintiff No.1 is a restricted estate within the meaning of Section 14(2) of the Hindu Succession Act, 1956?

7. Since the determination of the question on this point turns on the applicability of the provisions of Section 14 of the Hindu Succession Act,

1956, it would be appropriate to refer to the said provision which reads as follows:

14. Property of a female Hindu to be her absolute property:-

(1) Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her

as full owner thereof and not as a limited owner.

Explanation:- In this sub-section, "property" includes both movable and immovable property acquired by a female Hindu by

inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a

relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other

manner whatsoever, and also any such property held by her as stridhana immediately before the commencement of this Act.

(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.

8. In Tulasamma's case (supra) the Hon"ble Supreme Court has held as under:

Sub-section (1) of Section 14, is wide in its scope and ambit and uses language of great amplitude. It says that any property

possessed by a female Hindu, whether acquired before or after the commencement of the Act, shall be held by her as full owner

thereof and not as a limited owner. The words "any property" are, even without any amplification, large enough to cover any and

every kind of property, but in order to expand the reach and ambit of the section and make it all comprehensive, the legislature has

enacted an explanation which says that the property would include ""both movable or 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 the Act.

It is further held that:

whatever be the kind of property, movable or immovable, and whichever be the mode of acquisition, it would be covered by

subsection (1) of Section 14, the object of the legislature being to wipe out the disabilities from which a Hindu female suffered in

regard to ownership of property under the old Sastric law, to abridge the stringent provisions against proprietary rights which were

often regarded as evidence of her perpetual tutelage and to recognize her status as an independent and absolute owner of property.

With regard to interpretation of sub-section (2) of Section 14 of the Act, the view of the Hon"ble Supreme Court is that:

it is only when the property is acquired by a Hindu female as a new grant for the first time and the instrument, decree, order or

award giving the property prescribes the terms on which it is to be held by the Hindu female, namely, as a restricted owner, that

subRSA No.161/2002 section (2) comes into play and excludes the applicability of sub-section(1).

Dealing with the a question of pre-existing right of a Hindu widow, the Hon"ble Justice Fazal Ali in a separate judgment has held as under:

Thus on careful consideration and detailed analysis of the authorities mentioned above and the Shastric Hindu Law on the subject,

the following propositions emerge with respect to the incidents and characteristics of a Hindu Woman's right to maintenance:

(1) that a Hindu woman's right to maintenance is a personal obligation so far as the husband is concerned, and it is his duty to

maintain her even if he has no property. If the husband has property then the right of the widow to maintenance becomes an equitable

charge on his property and any person who succeeds to the property carries with it the legal obligation to maintain the widow;

(2) though the widow's right to maintenance is not a right to property but it is undoubtedly a pre-existing right in property, i.e. it is a

jus ad rem not jus in rem and it can be enforced by the widow who can get a charge created for her maintenance on the property

either by an agreement or by obtaining a decree from the Civil Court;

(3) that the right of maintenance is a matter of moment and is of such importance that even if the joint property is sold and the

purchaser has notice of the widow's right to maintenance, the purchaser is legally bound to provide for her maintenance;

(4) that the right to maintenance is undoubtedly a pre-existing right which existed in the Hindu law long before the passing of the Act

of 1937 or the Act of 1946 and is, therefore, a pre-existing right; (Emphasis ours).

(5) that the right to maintenance flows from the social and temporal relationship between the husband and the wife by virtue of which

the wife becomes a sort of co-owner in the property of her husband, though her coownership is of a subordinate nature; and

(6) that where a Hindu widow is in possession of the property of her husband, she is entitled to retain the possession in lieu of her

maintenance unless the person who succeeds to the property or purchases the same is in a position to make due arrangements for her

maintenance.

The above proposition is followed in the case of Rughubar Singh and others Vs. Gulab Singh and Others reported in AIR 1998 SC 2401, referred

to by the learned counsel for the appellant.

9. Applying the above principles to the facts of the present case, the real controversy in this case boils down to the question as to whether the suit

properties were granted to Smt.Laxmibai under the compromise decree in lieu of her maintenance? If the answer to this question is in the

affirmative, then by virtue of Section 14(1) of the Act, her restricted right in the property would be crystallized into absolute property and

consequently the sale deed executed by Venkatesh and Narayana in favour of the defendants would be rendered null and void. On the other hand,

if the properties are shown to have been acquired by her without any preexisting right, but only by virtue of a grant made in her favour under the

said compromise decree, sub-section (2) would come into play and consequently she would lose her right to hold the properties as an absolute

owner thereof.

10. The endeavor of the learned counsel for the respondents is to show that the properties acquired by the 1st plaintiff were acquired by her for

the first time under the compromise decree without any pre-existing right therein. In other words, the contention of the respondents is that, the grant

of life interest was a gratis and not in acknowledgement of her pre-existing right of maintenance.

11. In order to buttress his argument, the learned counsel has relied on the decision in Shivdev Kaur(Dead) By LRs and Others Vs. R S. Grewal

reported in (2013) 4 SCC 636. That was a case where the claim was based on the life interest created under a Will. After analyzing the law laid

down in Karmi Vs. Amru (1972) 4 SCC 86 and Sadhu Singh Vs. Gurdwara Sahib Narike (2006) 8 SCC 75, the Hon''ble Supreme Court has

held therein that:

....if a Hindu female has been given only a ""life interest"", through Will or gift or any other document referred to in Section 14 of the 1956 Act, the

said rights would not stand crystallized into absolute ownership as interpreting the provisions to the effect that she would acquire absolute

ownership/title into the property by virtue of the provisions of Section 14(1) of the 1956 Act, the provisions of Sections 14(2) and 30 of the 1956

Act would become otiose.

12. Likewise, in the other decision referred by learned counsel in Jagan Singh (Dead) Through LRs Vs. Dhanvanti and another reported in (2012)

2 SCC 628, a bhumidhari bequeathed his land by a Will and on account of that Will only and not on the basis of her own independent right, the

female claimed absolute ownership to the lands bequeathed to her under a Will. In that context, the Hon''ble Supreme Court held that;

The bequest made under Section 169(1) in favour of a female Hindu, if it is a restricted one, shall remain a restricted one under

Section 14(2) of the Hindu Succession Act, since the same will be governed by the terms of the Will. A widow who succeeds to the

property of her deceased husband on the strength of his Will, cannot claim any right other than those conferred by the Will. Thus, the

a life estate given to her under a Will cannot become an absolute estate under the provisions of Section 14(2) of the Hindu

Succession Act. Section 14 of the Hindu Succession Act, 1956 undoubtedly declares in Section 14(1) that a property of a female

Hindu is her absolute property, but it creates an exception in Section 14(2) which provides that Section 14(1) will not apply to any

property which is given away by instruments such as by way of a gift or under a Will. In the present case, the restricted interest

created in favour of respondent No.1 under the Will was permissible under Section 14 (2).

13. In the instant case, as already noted above, the plaintiff No.1 has based her claim to the suit properties as absolute owner on the specific plea

that the life interest in the properties in question were granted to her in lieu of her maintenance. There is no dispute as to the fact that the suit

schedule properties were joint family properties. As already pointed out, the pleadings contained in the previous proceedings clearly proceed on

the basis that the partition was sought in respect of the joint family properties and it is in this partition suit, a life interest was reserved to the plaintiff

No.1. Here itself it may be appropriate to refer to the relevant portion of the compromise petition whereby the said life interest was granted to the

original plaintiff No.1. It reads as follows:

VERNACULAR MATTER OMITTED

14. There is no dispute that original plaintiff No.1 was the second wife of Sri.Venkatesh. As per the Hindu Law applicable to the parties, she was

entitled to a right of maintenance out of the joint family properties. The right of the female to be provided with maintenance out of the estate of the

joint family properties is reiterated in Tulsamma's case referred above, wherein the Hon''ble Supreme Court has laid down as under:

It is settled law that a widow is entitled to maintenance out of her deceased husband's estate, irrespective whether the estate may be in the hands

of the male issue or it may be in the hands of his coparceners. The joint family

estate in which her deceased husband had a share is liable for her maintenance and she has a right to be maintained out of the joint family properties and though as pointed out by this Court in Rani Bai Vs. Yadunandan Ram (1969) 3 SCR 789 (AIR 1969 SC 1118), her claim for maintenance is not a charge upon any joint family property until she has got her maintenance determined and made a specific charge either by agreement or a decree or order of a court, her right is "not liable to be defeated except by transfer to a bona fide purchaser for value without notice of her claim or even with notice of her claim unless the transfer was made with an intention of defeating her right".

15. In the light of the above legal and factual position, the contention of the learned counsel for the defendants that the life interest granted to the 1st plaintiff was a fresh grant made to her as a gratis without there being any pre-existing right for maintenance cannot be accepted. From the above, it necessarily follows that, the deceased plaintiff No.1 having acquired the suit properties in lieu of her maintenance, by force of Section 14(1) of the Act, her restricted right is crystallized into absolute right. No other view is possible.

16. The decisions referred to by the learned counsel for the defendants/respondents relate to a situation, where the right was conferred on the female either under a Will or a gift, without there being any pre-existing right. Therefore, the said decisions are not applicable to the facts of this case. In the instant case, the plaintiff No.1 having been granted the properties only to provide her maintenance out of the joint family properties, I am of the clear view that the facts of this case fall within the provisions of Section 14(1) of the Act.

17. The argument of the learned counsel for the defendants that the life interest reserved in favour of plaintiff No.1 came to be vested in her only after the death of her husband subsequent to the coming into operation of the Act of 1956 and therefore, she is not entitled to the benefit of Section 14(1) of the Act, is a self-defeating argument. Having regard to the language employed in Section 14(1) of the Act and the intendment of the legislature in engrafting the said provision as elucidated in the above decisions, any property possessed by a female Hindu, whether acquired before or after the commencement of the Act, would enure to her benefit

irrespective of whether she was in possession of the properties before or after the commencement of the Act.

18. In the case of Eramma Vs. Veerupana and Others reported in AIR 1966 SC 1879, the Hon"ble Supreme Court has clarified the position of

law as under:

The property possessed by a female Hindu, as contemplated in the section, is clearly the property to which she has acquired some kind of title

whether before or after the commencement of the Act.

19. Undisputedly, the possessory title was acquired by the plaintiff No.1 along with her husband pursuant to the aforesaid compromise decree as

back as in 1939. Therefore, it cannot be said that she had not acquired any right to the suit lands before commencement of 1956 Act. Insofar as

the argument of the learned counsel for the respondent that the original plaintiff No.1 was not in possession of the suit properties as on the date of

commencement of the Act, and that she came in possession only after 1957 and therefore, her claim does not fall within the purview of Section

14(1) of the Act is concerned, suffice it to note that keeping in view the intendment of Section 14 of the Act, the word "possessed" used in this

Section has been given a wider connotation than ascribed by the learned counsel for the respondents.

20. The meaning of the word "possessed" in the context of Section 14 of the Act has been expounded by the Hon"ble Supreme Court in the case

of Gummalapura Taggina Matada Kotturawami Vs. Setra Veeravva and Others reported in AIR 1959 SC 577. It is stated therein the word

"possessed" means "'state of owning or having in one's hands or power'". It is further explained that, it need not be actual physical possession or

personal occupation of the property by the female. Even it can be constructive possession or power to hold possession in the eye of law.

21. In the instant case, undeniably, the right of possession was reserved in favour of the original plaintiff in the compromise decree in Special Suit

No.19/1939. In view of the life interest reserved in her favour, any subsequent transfer or alienation of the properties would be subject to the said

life interest. It is a matter of record that the predecessors of the respondents though laid a claim to the suit lands, on the strength of the registered

sale deeds, both sale deeds have been declared as null and void and conclusive

finding has been rendered by the competent Court that the purchasers, namely the predecessors of the respondents herein, were not bona fide purchasers. As a result, right of the original plaintiff No.1 Smt.Laxmibai has remained undisturbed. Even if it is assumed that the subsequent transferees were in possession of the lands belonging to the 1st plaintiff, in view of the reservation of the possessory right in her favour, it should be regarded as the possession of the 1st plaintiff in the eye of law. Even otherwise, it is not in dispute that much before the institution of above suits, plaintiff No.1 obtained possession of the suit properties through the process of Court in a Execution Petition arising out of L.C.Suit No.308/1957. The decree in the said proceedings was passed in favour of the plaintiff No.1 based on her subsisting right to possession.

22. Therefore, the argument of the learned counsel that the original plaintiff No.1 was out of the possession as on the date of the commencement of the Act and hence, she is not entitled to invoke Section 14(1) of the Act, cannot be accepted.

23. Viewed from any angle, I do not find any justifiable reason to accept the contentions urged by the learned counsel for the respondents. In the light of the facts and circumstances discussed above, I am of the firm opinion that the suit lands were granted to the original plaintiff No.1 in lieu of her maintenance. She acquired right to the suit properties before the commencement of the Act. She possessed the suit properties as on the date of the commencement of the Act. Therefore, by force of Section 14(1) of the Act, the right acquired by her is enlarged into an absolute right and accordingly, she is entitled to hold the said property as absolute owner thereof.

24. In view of this conclusion, the finding recorded by the 1st Appellate Court cannot be sustained. The learned 1st Appellate Court has misconceived the provisions of the Act. The interpretation placed by the 1st Appellate Court is contrary to the settled proposition of law enunciated by the Apex Court and the facts of this case. Therefore, the said finding is liable to be set aside. As a result, the appeals deserve to be allowed.

25. Accordingly, answering the above point in favour of the appellant, I and proceed to pass the following: The appeals are allowed. The impugned judgment dated 04.09.2001 passed by the Principal Civil Judge

(Sr.Dn.), Hubballi in R.A.Nos.37/1996 and R.A.No.63/1996 is set aside. The judgment and decree passed by the Principal Civil Judge (Jr.Dn.) in O.S.No.1001/1989 and O.S.No.1002/1989 is restored.

O.S.Nos.1001/1989 and 1002/1989 are decreed. Draw decree accordingly.