
(1960) 11 BOM CK 0009
In the Bombay High Court
Case No : A.F.A.D. No. 2269 of 1957

Bapurao Dhondiba and Another

APPELLANT

Vs

Neroji Ramji and Others

RESPONDENT

Date of Decision : 22-11-1960

Acts Referred:

Hindu Succession Act, 1956 — Section 14, 14(1), 15, 4

Citation : AIR 1961 Bom 300 : (1961) 63 BOMLR 576

Hon'ble Judges : V.S. Desai, J; Abhyankar, J

Bench : Division Bench

Advocate : S.J. Deshpande, G.B. Ardhapurkar and S.G. Deshmukh, for the Appellant; R.G. Nadapurkar and M.G. Choudhari, for the Respondent

Judgement

V.S. Desai, J.—This second appeal raises a short question relating to the rights of the reversioners to challenge the alienation effected by a Hindu widow prior to the commencement of the Hindu Succession Act. The respondent No. 4 Sarja Bai, who was the widow of Irba and whose property she had inherited as a Hindu widow on his death, effected a sale-deed in respect of some of the properties in favour of the appellants on 29th August 1953. The respondents 1 to 3, who are the sons of the cousins of Irba claiming to be the next reversioners to the estate filed the present suit for a declaration that the sale-deed effected by respondent No. 4 in favour of the appellants was without any consideration and without legal necessity and did not affect the rights of the next reversioners in respect of the property comprised in the sale-deed. The suit was resisted by the appellants, who were the alienees on the ground that tile alienation had been effected by Sarjabai for the payment of antecedent debts of the husband and was, therefore, good and valid and justified by necessity. The suit was filed on 20th October 1953 and was decided in the plaintiff's favour and the trial Court granted them the declaration which they had prayed for. Against the decree of the trial Court the appellants and Sarjabai filed an appeal in the Court of the District and Sessions Judge at Parbhani. The appeal, however, was dismissed on 6th July 1955 and the decree passed by the trial Court was confirmed. The appellants

then filed the present second appeal in the High Court, against the decision and decree of the lower appellate Court. During the pendency of the appeal on 17th June 1950 the Hindu Succession Act of 1956 became applicable and it is contended in the present second appeal relying on certain provisions of the said Act that the suit by the reversioners is not maintainable and, therefore, must be dismissed.

2. Now there can be no doubt that the appellate Court is entitled to take into account any change in the law which has taken place during the pendency of the litigation. If, therefore, the contention which is sought to be raised on behalf of the appellants is available to them under the Hindu Succession Act, they are entitled to raise it in the present second appeal. Now, the contention which has been raised by Mr. Deshpande for the appellants is that the result of the provisions of the Hindu Succession Act is that the limited estate which was known to the Hindu law as the Hindu Women's Estate or the Hindu Widow's estate, has been done away with and has been substituted by full ownership in the Hindu female. The reversioners also have been done away with under the provisions of the Hindu Succession Act so that no reversioner exist who are in a position to challenge the alienation as under the customary Hindu Law. Mr. Deshpande argues that it may be that at the date when the suit was filed by the present plaintiffs they had the right to challenge the alienation. Their right, however, has disappeared during the pendency of the legation and they, therefore, will not be now entitled to the declaration which they had prayed in the suit and which was given to them by the decree of the trial Court.

3. In order to appreciate this contention which has been raised by Mr. Deshpande, it is necessary to consider the relevant provisions of the Hindu Succession Act and their true legal effect. The provision of the Hindu Succession Act which enlarges the right of the Hindu female is contained in Section 14 of the Act. That section states:

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

The explanation to the section gives the connotation of the word "property" used in this provision and Sub-section (2) provides that the enlargement of the limited ownership into full ownership u/s 14(1) will not apply to the property such as specified in this sub-section. The provisions of Sub-section (1) of this section with which we are primarily concerned in the present case apply to property which is possessed by the female Hindu irrespective of whether the property was acquired by her before or after the commencement of the Act. In so far as the provision of this section covers the property which was acquired even before the commencement of the Act, the provision is undoubtedly retrospective. What is important to be noted, however, is that the enlargement of the rights in the estate are confined to the property which is possessed by the female Hindu, It is now well-settled that the expression "possessed" as used in this section is not

restricted to the actual physical possession but is used in a wide sense and in the context means the state of owning or having in one's possession or power. *Gummalapura Taggina Matada Kotturuswami Vs. Setra Veeravva and Others*, . It is also well settled that the word "possessed" does not mean possessed at any time but possessed at the date of the commencement of the Act so that if the Hindu female had alienated the property absolutely and had thus deprived herself of the right to possession of that property before the commencement of the Act, the provisions of Section 14(1) will not apply to such property and will not have the effect of enlarging the rights of the female in respect of that property into full ownership rights. Now, the property in the present case had been alienated by Sarjabai in favour of the appellants on 29th August 1953 which was long before the commencement of the Hindu Succession Act. There can, therefore, be no doubt that Sarjabai was not possessed of the property at the date of the commencement of the Hindu Succession Act and Section 14(1) did not apply to the said property and did not have the effect of enlarging the rights of Sarjabai in respect of that property into full ownership. Now, the interest which Sarjabai had held in the property alienated by her was the Hindu widow's estate under the customary Hindu law. As has been held in a number of judicial decisions, the estate which a Hindu widow has in her husband's property is not the life estate or the estate for a life. The estate held by her is ownership of the property subject to certain restrictions on alienations and subject to devolution upon the next heir of her husband upon her death and not on her heirs. The reversioners have no vested rights in this property nor any interest therein. They have merely what is called a *spes successionis*. It is only when the widow dies that the succession to the estate opens to the last male holder of the property and the nearest of such heirs becomes entitled to the property. If the property held by the widow is alienated by her without any justifying necessity, the alienation is good during her life time but is capable of being challenged by the next reversioners on her death and even during her life time by the presumptive reversioners for protecting the interest and rights of the reversioners in respect of the said property. As we have already pointed out, the provisions of Section 14 of the Hindu Succession Act did not affect the property except such as was possessed by the Hindu Female. So far as the property other than the property which was referred to in Section 14 is concerned, the position remained the same as under the customary Hindu law. In our opinion therefore, the reversioners' rights as they existed under the customary Hindu law to bring a suit challenging the alienation and obtaining a declaration, in protection of the rights of the reversioners is in no way affected and the suit brought by the reversioners is not rendered untenable as contended by Mr. Deshpande.

4. Mr. Deshpande has argued that the contention which he is urging is supported by a decision of the Allahabad High Court in the case of *B. Hanuman Prasad and Others Vs. Mst. Indrawati and Others*, . It was held in that case that although on alienation by a Hindu widow made before the passing of the Act is still vulnerable if not justified by legal necessity, the alienation cannot be challenged because the

reversioners, who could have challenged the said alienation, have completely disappeared by virtue of the provisions of Section 15 of the Hindu Succession Act. According to the view taken in the said case on the coming into force of the Hindu Succession Act, the reversioners have lost their status by virtue of which they were entitled to challenge the alienation made by the widow. It is no doubt true that the view taken in the said case supports Mr. Deshpande, but with great respect to the learned Judges we are, however, not in agreement with the view taken in that case. In our opinion although as a result of the application of the Hindu Succession Act, the reversioners have ceased to exist to a large extent, it is not that they have been done away with altogether. Section 4 of the Hindu Succession Act overrides any text, rule or interpretation of Hindu law or any custom or usage as part of that "aw in force immediately before the commencement of the Act and makes any such text, rule etc. cease to have any effect with respect to any matter for which provision is made in the Act. It also provides that any other law in force immediately before the commencement of the Act shall cease to apply to Hindus in so far as it is inconsistent with any of the provisions contained in the Act. The over-riding effect provided by this provision is with regard to such matters as have been provided for and dealt with under the Hindu Succession Act. As has been observed by this Court in *Ramchandra Sitaram and Others Vs. Sakham and Others*, , Section 4 merely enacts that if there be conflict between the provisions of the Act and any text, rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of the Act, on any matter for which provision is made in the Act, the text, rule or inter-pretation, or any custom or usage, will be deemed to be superseded by the provisions of the Act. Similarly, laws in force immediately before the commencement of the Act which are inconsistent with the provisions of the Hindu Succession Act stand pro tanto repealed. But the text, rule or interpretation of Hindu law stands superseded only qua any matter for which provision is made in the Act and Section 14(1) makes no provision concerning property not possessed by a Hindu female. The combined effect of the provisions of Sections 4 and 14(1) of the Hindu Succession Act is, as stated by the Calcutta High Court in the case of *Gosha Behari Bera and Others Vs. Haridas Samanta and Others*, , that the Hindu Law regarding the Hindu Widows Estate will not apply to property held and possessed by a Hindu female from the date of the commencement of the Act and that such Hindu female shall hold property thereafter not as a limited owner under the Hindu Law but as full owner. These provisions affect property held and possessed by a Hindu female at the date of commencement of the Act and cannot affect any property which was held and possessed in the past by such female but which she had transferred and thereby ceased to hold and possess at the date of the commencement of the Act or to which succession had opened on her death before the commencement of the Act. It would, therefore, follow that in respect of the properties which are dealt with u/s 14 of the Act, the Hindu female having become the full owner, the rights of the reversioners will disappear. But in respect of such properties which have not been dealt with in the said provision

the position remains as before under the customary Hindu law and the reversioners can-not be said to have been done away with in respect of such property.

5. It is then urged that Section 15 has the effect of cluing away with the reversioners. Section 15 provides for the heirs to the Hindu female in respect of the property of which she is a full owner. Since all the property such as mentioned in Section 14(1) of the Act becomes the property of the female as full owner, the heirs to that property on her death will be as mentioned in Section 15 and not the heirs of the husband as under the old customary law. To this extent also the reversioners who claim to be the heirs of the last male holder disappear from the scene and can be said to have been done away with, but because the reversioners have thus disappeared from the scene to a great extent, it cannot be said that they have been done away with altogether. With great respect, therefore, we cannot agree with the view taken by the Allahabad High Court.

6. Mr. Deshpande has urged that the same view also has been taken by a decision of our Court in *Sugandhabai Shivram v. Sundrabai*, 61 Bom LR 560: AIR 1960 Bom 32 . It has been held in that case that the provisions of Section 14 of the Act being retrospective in operation would affect suits filed from the commencement of the Act, that is, June 17, 1956, so that any such suit in which the reversionary heir claims a declaration about his or her reversionary right regarding the property of the last male holder or any relief that would, in any manner be inconsistent with the full proprietary rights conferred on the female Hindu by Section 14 of the Act, would become incompetent by reason of the fact that the heir has ceased to be a reversionary heir. In that case, however, this Court was dealing with the property of which the Hindu female was possessed. There the validity of an adoption made by a widowed mother was being challenged by a daughter. Although the suit was filed by her as a reversioner the view taken by this Court was that the suit could be regarded as one filed by her as an heir to the mother and for a declaration in respect of a matter which affected her legal status. It was held that considered from that point of view, the daughter's suit was maintainable although as a suit in the capacity of the next reversioners it would not have been so maintainable. As we have already pointed out the position of a next reversioner was not available in that case by reason of the provisions of Section 14 having been applied to the property in the suit. In respect of a suit which is brought by a reversioner challenging an adoption made by the female holder of the property, the Supreme Court in the recent case of *Gummalapura Taggina Matada Kotturuswami Vs. Setra Veeravva and Others*, have pointed out that such a suit would not be maintainable because even if the adoption is held invalid, the right to possession of property in that case would belong to the widow and she would, therefore, be possessed of the property within the meaning of Section 14 and become a full owner thereof. The view taken by our Court in 61 Bom LR 560: AIR 1960 Bom 32, to which Mr. Deshpande has invited our attention, is similar to the view taken in the Supreme Court case. As we have already pointed out, in cases where the right to

possession belonged to the limited owner at the date of the commencement of the Act, the reversioners have clearly disappeared from the scene and their rights have also vanished. But in respect of such properties which under the provisions of Section 14 have not been made properties of the full ownership of the Hindu female, the position remain unchanged with the result that the reversioners are entitled to challenge the alienation and the suits protect the rights of the reversioners.

7. The view that we are taking is supported by abundant authority of practically a large number of High Courts. Thus in *Mst. Janku and Others Vs. Kisan*, , it has been held:

"No doubt, if a Hindu female died possessed of property in which her rights had already been improved by the application of Section 14, the reversioners would not have any claim to it. The property to which Section 14 applies is held by the widow as a full owner and she becomes in respect thereof a fresh stock of descent without advertence to how the property came to her. In respect, however, of property not in her hands and which, is not improved in this manner, there is nothing to show that the rules of Hindu Law have been abrogated. Section 4 of the Act no doubt, makes the Act override any text, rule or interpretation, of Hindu Law or any custom or usage as part of that Law in force immediately before its commencement; but it does not say anything about the nature of the property nor how it shall be disposed of, particularly in cases where the widow has done everything to put herself out of the benefit of Section 14. If Section 14 does not apply, Section 15 also has no place, and the property devolves according to Hindu Law because rights in ownership of the property can only be affected to the extent provided in Sections 14 and 15 and no more".

This was a case similar to the case before us and it was held that the suit of the reversioner was maintainable and he was entitled to the declaration which he had prayed for.

8. In *Murudakkal v. Arumugha*, AIR 1958 Mad 255 it was also held:

"A reversioner gets abolished as a consequence of the woman's estate being enlarged to full ownership. In a case where the alienation is not binding on the reversioners to the estate of the last male holder, the interest which the alienee gets is the right to have an alienation impeached by the woman and to hold the property at the pleasure of the reversioners on the termination of the woman's estate. That interest of the alienee is not affected either to his advantage or to his prejudice by section 14 (1)."

A Full Bench of the Patna High Court in *Harak Singh Vs. Kailash Singh and Another*, , has also taken the same view, where it has been held that the right of the reversioner to repudiate the alienation made by a Hindu female is not adversely affected and taken away by Section 14 of the Act. The Orissa and the Punjab High Courts have also taken the same view, (see *Sansir Patelin and Another Vs. Satyabati Naikani and Another*, and *Amar Singh and Others Vs. Sewa*

Ram and Others,).

9. In our opinion, therefore, the contention raised by Mr. Deshpande cannot be upheld.

10. The result, therefore, is that the appeal Jail and is dismissed with costs.

11. Appeal dismissed